AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

# Federal Register

8–3–01 Friday
Vol. 66 No. 150 August 3, 2001
Pages 40573–40838

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

**The seal of the National Archives and Records Administration authenticates the Federal Register** as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $638, or $697 for a combined **Federal Register,** Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $253. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $9.00 for each issue, or $9.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

**How To Cite This Publication:** Use the volume number and the page number. Example: 66 FR 12345.

Printed on recycled paper.

## SUBSCRIPTIONS AND COPIES

| | |
|---|---|
| **PUBLIC** | |
| **Subscriptions:** | |
| Paper or fiche | **202–512–1800** |
| Assistance with public subscriptions | **512–1806** |
| **General online information** | **202–512–1530; 1–888–293–6498** |
| **Single copies/back copies:** | |
| Paper or fiche | **512–1800** |
| Assistance with public single copies | **512–1803** |
| **FEDERAL AGENCIES** | |
| **Subscriptions:** | |
| Paper or fiche | **523–5243** |
| Assistance with Federal agency subscriptions | **523–5243** |

# Contents

**Federal Register**

Vol. 66, No. 150

Friday, August 3, 2001

**Agency for Toxic Substances and Disease Registry**
NOTICES
Meetings:
Hanford Health Projects Inter-tribal Council et al., 40705

**Agriculture Department**
*See* Animal and Plant Health Inspection Service
*See* Forest Service
*See* Natural Resources Conservation Service

**Alcohol, Tobacco and Firearms Bureau**
RULES
Alcohol, tobacco, and other excise taxes:
Firearms; identification markings, 40596–40601

**Animal and Plant Health Inspection Service**
RULES
Plant-related quarantine, domestic:
Mexican fruit fly, 40573–40574

**Antitrust Division**
NOTICES
National cooperative research notifications:
Advanced Lead-Acid Battery Consortium, 40724
Application Service Provider Industry Consortium, Inc., 40724–40727
DVD Copy Association, 40727–40729
Southwest Research Institute, 40729

**Blackstone River Valley National Heritage Corridor Commission**
NOTICES
Meetings, 40711

**Blind or Severely Disabled, Committee for Purchase From People Who Are**
*See* Committee for Purchase From People Who Are Blind or Severely Disabled

**Centers for Disease Control and Prevention**
NOTICES
Meetings:
Smoking and Health Interagency Committee, 40705–40706

**Centers for Medicare & Medicaid Services**
NOTICES
Agency information collection activities:
Proposed collection; comment request, 40706
Medicare and Medicaid:
Organ procurement organizations in designated areas; hospitals requesting waivers; list, 40706–40708

**Commerce Department**
*See* Foreign-Trade Zones Board
*See* International Trade Administration
*See* National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 40672–40673

**Commission of Fine Arts**
NOTICES
Meetings, 40680

**Committee for Purchase From People Who Are Blind or Severely Disabled**
NOTICES
Procurement list; additions and deletions, 40670–40672

**Customs Service**
PROPOSED RULES
Air commerce:
Private aircraft programs; General Aviation Telephonic Program establishment and Overflight Program revisions, 40649–40659
NOTICES
Agency information collection activities:
Proposed collection; comment request, 40778–40782
Liquidation of duties:
Continued dumping and subsidy offset; distribution to affected domestic producers, 40782–40800

**Defense Department**
RULES
Civilian health and medical program of uniformed services (CHAMPUS):
TRICARE program—
CHAMPUS beneficiaries 65 and older; eligibility and payment procedures, 40601–40609
PROPOSED RULES
Federal Acquisition Regulation (FAR):
High-technology workers; signing and retention, 40837–40838
NOTICES
United Kingdom; defense items; waiver of DOD procurement limitations, 40680–40681

**Education Department**
NOTICES
Agency information collection activities:
Proposed collection; comment request, 40681–40682

**Employment and Training Administration**
RULES
Aliens:
Permanent employment in U.S.; labor recertification process—
Applications refiling, 40584–40590
NOTICES
Meetings:
Migrant and Seasonal Farmworker Employment and Training Advisory Committee, 40730

**Employment Standards Administration**
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 40730–40732

**Energy Department**
*See* Energy Efficiency and Renewable Energy Office
*See* Federal Energy Regulatory Commission

**Energy Efficiency and Renewable Energy Office**
NOTICES
Consumer products; energy conservation program:
Electrolux Home Products; waiver from refrigerator test procedure, 40689–40691

**Environmental Protection Agency**
RULES
Air quality implementation plans:
Interstate ozone transport reduction—
Nitrogen Oxides State Implementation Plan Call; electric generating units; seasonal heat input growth rates; response to remands in court cases, 40609–40616
Air quality implementation plans; approval and promulgation; various States:
Oregon, 40616–40622
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Indiana, 40801–40832
Oregon, 40664
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 40698–40699
Weekly receipts, 40697–40698

**Federal Aviation Administration**
RULES
Airworthiness directives:
Airbus, 40582–40584
Airworthiness standards:
Special conditions—
Ayres Corp. Model LM 200 Loadmaster airplane, 40580–40581
PROPOSED RULES
Airworthiness directives:
Fokker, 40646–40648
McDonnell Douglas, 40645–40646
NOTICES
Environmental statements; availability, etc.:
Lihue Airport, HI; cancellation, 40774–40775
Passenger facility charges; applications, etc.:
Gillete-Campbell County Airport, WY, 40775
Valley International Airport, TX, 40775–40776

**Federal Communications Commission**
PROPOSED RULES
Common carrier services:
Individuals with hearing and speech disabilities; telecommunications relay services
Correction, 40666
NOTICES
Agency information collection activities:
Proposed collection; comment request, 40699–40700
Reporting and recordkeeping requirements, 40700–40702

**Federal Emergency Management Agency**
NOTICES
Disaster and emergency areas:
Louisiana, 40702
Oklahoma, 40702
West Virginia, 40702

**Federal Energy Regulatory Commission**
NOTICES
Electric rate and corporate regulation filings:
Ameren Energy Generating Co. et al., 40692–40694
Environmental statements; notice of intent:
Kern River Gas Transmission Co., 40684–40686
Hydroelectric applications, 40694–40697
*Applications, hearings, determinations, etc.:*
Calypso Pipeline, LLC, 40682–40683
Cinergy Services, Inc., 40683
Dauphin Island Gathering Partners, 40684
El Paso Natural Gas Co., 40684, 40692
Natural Gas Pipeline Co. of America, 40686
Neptune Regional Transmission System, LLC, 40686–40687
Northbrooke Carolina Hydro, L.L.C., 40687
Northern Border Pipeline Co., 40687
Northern Natural Gas Co. et al., 40687–40688
Northwest Pipeline Corp., 40688
NRG Energy, Inc., et al., 40688
Richmond County Power, LLC, 40688–40689
Steuben Gas Storage Co., 40689
Tennessee Gas Pipeline Co., 40682
TransColorado Gas Transmission Co., 40691
Transcontinental Gas Pipe Line Corp., 40692
Williston Basin Interstate Pipeline Co., 40692

**Federal Reserve System**
NOTICES
Agency information collection activities:
Reporting and recordkeeping requirements, 40702–40703
Banks and bank holding companies:
Formations, acquisitions, and mergers, 40703–40704
Permissible nonbanking actitvities, 40704

**Federal Transit Administration**
NOTICES
Environmental statements; notice of intent:
Memphis, TN; Downtown-Airport Corridor; transportation improvements, 40776–40777

**Fine Arts Commission**
*See* Commission of Fine Arts

**Food and Drug Administration**
NOTICES
Animal drugs, feeds, and related products:
Alpharma, Inc.; approval withdrawn, 40708
Reports and guidance documents; availability, etc.:
Automated testing instruments used in blood establishments; premarket notification submissions; guidance for FDA reviewers, 40708–40709

**Foreign-Trade Zones Board**
NOTICES
*Applications, hearings, determinations, etc.:*
California
Atlantic Richfield Co.; oil refinery complex, 40673
Iowa
Deere & Co.; construction equipment manufacturing facility, 40673

**Forest Service**
NOTICES
Meetings:
Lake Tahoe Basin Federal Advisory Committee, 40670

**General Services Administration**
PROPOSED RULES
Federal Acquisition Regulation (FAR):
High-technology workers; signing and retention, 40837–40838

**Geological Survey**
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 40711–40712

**Health and Human Services Department**
*See* Agency for Toxic Substances and Disease Registry
*See* Centers for Disease Control and Prevention
*See* Centers for Medicare & Medicaid Services
*See* Food and Drug Administration
*See* Health Resources and Services Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
National Vaccine Advisory Committee, 40705

**Health Resources and Services Administration**
NOTICES
National Vaccine Injury Compensation Program:
Petitions received, 40709–40710

**Housing and Urban Development Department**
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 40710–40711

**Immigration and Naturalization Service**
NOTICES
Temporary protected status program designations:
Montserrat, 40833–40835

**Indian Affairs Bureau**
NOTICES
Indian tribes, acknowledgment of existence determinations, etc.:
Ohlone/Costanoan Muwekma Tribe, CA, 40712–40714
Liquor and tobacco sale or distribution ordinance:
Tuolumne Rancheria, CA, 40714–40716

**Interior Department**
*See* Blackstone River Valley National Heritage Corridor Commission
*See* Geological Survey
*See* Indian Affairs Bureau
*See* Land Management Bureau
*See* Minerals Management Service
*See* Reclamation Bureau

**Internal Revenue Service**
RULES
Income taxes:
Controlled corporations; recognition of gain on certain distributions of stock or securities in connection with acquisition, 40590–40596
PROPOSED RULES
Income taxes:
Constructive and property transfers to third party on behalf of spouse, 40659–40663
NOTICES
Grants and cooperative agreements; availability, etc.:
Tax Counseling for Elderly Program; application packages availability, 40800

**International Trade Administration**
NOTICES
Committees; establishment, renewal, termination, etc.:
Environmental Technologies Trade Advisory Committee, 40673–40674

**International Trade Commission**
NOTICES
Import investigations:
Flooring products, 40720–40721
Lens-fitted film packages, 40721–40722
Plasma display panels and products containing same, 40722
Steel wire rod, 40722–40723

**Justice Department**
*See* Antitrust Division
*See* Immigration and Naturalization Service
NOTICES
Pollution control; consent judgments:
Dayton Power & Light Co. et al., 40723–40724
Montrose Chemical Corp. of California et al., 40724

**Labor Department**
*See* Employment and Training Administration
*See* Employment Standards Administration
*See* Occupational Safety and Health Administration
*See* Pension and Welfare Benefits Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Presidential Task Force on Employment of Adults with Disabilities Youth Advisory Committee, 40729–40730

**Land Management Bureau**
NOTICES
Realty actions; sales, leases, etc.:
Nevada, 40716–40717
Resource management plans, etc.:
Lake Havasu Field Office, AZ, 40717–40718

**Maritime Administration**
PROPOSED RULES
Maritime carriers and related activities:
Vessel transfer to foreign registry upon revocation of fishery endorsement; denial, 40664–40666

**Minerals Management Service**
NOTICES
Meetings:
Minerals Management Advisory Board, 40718–40719

**National Aeronautics and Space Administration**
PROPOSED RULES
Federal Acquisition Regulation (FAR):
High-technology workers; signing and retention, 40837–40838
NOTICES
Inventions, Government-owned; availability for licensing, 40748–40749

**National Credit Union Administration**
RULES
Credit unions:
Involuntary liquidation; adjudication of creditor claims, 40574–40575
Records preservation program, 40578–40580
Service organizations; investments and loans, 40575–40578
PROPOSED RULES
Credit unions:
Organization and operations—
Compensation; definition amended, 40641–40642
Prompt corrective action and insurance requirements—
Financial and Statistical Reports; filing requirements, 40642–40645

**National Highway Traffic Safety Administration**
RULES
Motor vehicle theft prevention standard:
High-theft vehicle lines for 2002 model year; listing, 40622–40625

**National Oceanic and Atmospheric Administration**
NOTICES
Coastal zone management programs and estuarine sanctuaries:
North Carolina National Estuarine Research Reserve; boundary expansion, 40674
Grants and cooperative agreements; availability, etc.:
National Estuarine Research Reserve System; graduate research fellowships, 40674–40680

**Natural Resources Conservation Service**
NOTICES
Field office technical guides; changes:
Virginia, 40670

**Nuclear Regulatory Commission**
PROPOSED RULES
Production and utilization facilities; domestic licensing:
Light-water cooled nuclear power plants, components; construction and inservice inspection and testing; industry codes and standards, 40626–40640
NOTICES
Reports and guidance documents; availability, etc.:
Nuclear power plants operating license renewal applications, and generic aging lessons learned; regulatory guide, standard review plan, and report, 40750–40751
*Applications, hearings, determinations, etc.:*
PPL Susquehanna, LLC, et al., 40749
PSEG Nuclear LLC, 40749–40750

**Occupational Safety and Health Administration**
NOTICES
Agency information collection activities:
Proposed collection; comment request, 40732–40733

**Pension and Welfare Benefits Administration**
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Plumbers and Steamfitters Local No. 489 of Cumberland, MD, et al., 40733–40735
Principal Mutual Holding Co. et al., 40736–40748

**Postal Service**
PROPOSED RULES
Domestic Mail Manual
Mail delivery to commercial mail receiving agency, 40663–40664

**Public Health Service**
*See* Agency for Toxic Substances and Disease Registry
*See* Centers for Disease Control and Prevention
*See* Food and Drug Administration
*See* Health Resources and Services Administration

**Railroad Retirement Board**
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 40751

**Reclamation Bureau**
NOTICES
Environmental statements; notice of intent:
Santa Cruz and Monterey Counties, CA; Pajaro Valley Water Management Agency Basin Management Plan Update Project, 40719–40720

**Securities and Exchange Commission**
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 40751–40753
Investment Company Act of 1940:
Deregistration applications—
Hambrecht & Quist Fund Trust et al., 40753–40754
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 40755–40757
Chicago Board Options Exchange, Inc., 40757–40759
International Securities Exchange LLC, 40759–40760
National Association of Securities Dealers, Inc., 40761
New York Stock Exchange, Inc., 40761–40764
Options Clearing Corp., 40764–40770
Pacific Exchange, Inc., 40770–40772
Philadelphia Stock Exchange, Inc., 40772–40774

**State Department**
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 40774

**Surface Transportation Board**
NOTICES
Rail carriers:
TTX Co. et al.; pooling of car services regarding flat cars; approval application, 40777–40778

**Toxic Substances and Disease Registry Agency**
*See* Agency for Toxic Substances and Disease Registry

**Transportation Department**
*See* Federal Aviation Administration
*See* Federal Transit Administration
*See* Maritime Administration
*See* National Highway Traffic Safety Administration
*See* Surface Transportation Board
PROPOSED RULES
Standard time zone boundaries:
North Dakota, 40666–40669

**Treasury Department**
*See* Alcohol, Tobacco and Firearms Bureau
*See* Customs Service
*See* Internal Revenue Service

## Separate Parts In This Issue

**Part II**
Environmental Protection Agency, 40801–40832

**Part III**
Department of Treasury, Internal Revenue Service, 40833–40835

**Part IV**
Department of Defense, General Services Administration, National Aeronautics and Space Administration, 40837–40838

## Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.


**7 CFR**
301.....40573

**10 CFR**
**Proposed Rules:**
50.....40626

**12 CFR**
709.....40574
712.....40575
749.....40578
**Proposed Rules:**
701.....40641
702.....40642
741.....40642

**14 CFR**
23.....40580
39.....40582
**Proposed Rules:**
39 (2 documents) .....40645, 40646

**19 CFR**
**Proposed Rules:**
122.....40649
123.....40649

**20 CFR**
656.....40584

**26 CFR**
1.....40590
**Proposed Rules:**
1.....40659

**27 CFR**
178.....40596
179.....40596

**32 CFR**
199.....40601

**39 CFR**
**Proposed Rules:**
111.....40663

**40 CFR**
51.....40609
52 (2 documents) .....40609, 40616
96.....40609
97.....40609
**Proposed Rules:**
52 (2 documents) .....40664, 40802

**46 CFR**
**Proposed Rules:**
221.....40664

**47 CFR**
**Proposed Rules:**
64.....40666

**48 CFR**
**Proposed Rules:**
31 (3 documents) .....40838

**49 CFR**
541.....40622
**Proposed Rules:**
71.....40666

# Rules and Regulations

Federal Register
Vol. 66, No. 150
Friday, August 3, 2001

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

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 301

**[Docket No. 99–075–5]**

### Mexican Fruit Fly Regulations; Regulated Areas, Regulated Articles, and Treatments

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

**ACTION:** Affirmation of interim rules as final rule.

**SUMMARY:** We are adopting as a final rule, without change, a series of interim rules published in the **Federal Register** between September 1999 and June 2000 that amended the Mexican fruit fly regulations by adding and subsequently removing regulated areas in the State of California. One of the interim rules also added an alternative chemical treatment for premises; added a cold treatment for citrons, litchis, longans, persimmons, and white zapotes, which are regulated articles; and removed kumquats from the list of regulated articles. These actions were necessary on an emergency basis to prevent the spread of the Mexican fruit fly into noninfested areas of the continental United States, to provide additional treatment options for regulated articles, and to relieve unnecessary restrictions on the movement of kumquats from regulated areas.

**EFFECTIVE DATES:** The interim rules became effective September 22, 1999, December 14, 1999, April 12, 2000, and June 7, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen A. Knight, Operations Officer, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8039.

**SUPPLEMENTARY INFORMATION:**

## Background

In an interim rule effective September 22, 1999, and published in the **Federal Register** on September 28, 1999 (64 FR 52211–52212, Docket No. 99–075–1), we amended the regulations by designating portions of San Bernardino and Riverside Counties, CA, as regulated areas because of an infestation of Mexican fruit fly. In a second interim rule effective December 14, 1999, and published in the **Federal Register** on December 21, 1999 (64 FR 71267–71270, Docket No. 99–075–2), we added a portion of San Diego and Riverside Counties, CA, to the list of regulated areas. In addition, the December 1999 interim rule provided for the use of a new alternative chemical treatment for premises; provided for the use of a cold treatment for citrons, litchis, longans, persimmons, and white zapotes; and removed kumquats from the list of regulated articles. In a third interim rule effective April 12, 2000, and published in the **Federal Register** on April 18, 2000 (65 FR 20705–20706, Docket No. 99–075–3), we removed the regulated portion of San Bernardino and Riverside Counties, CA, from the list of regulated areas based on our determination that the Mexican fruit fly had been eradicated from that area. Finally, in a fourth interim rule effective on June 7, 2000, and published in the **Federal Register** on June 13, 2000 (65 FR 37005–37006, Docket No. 99–075–4), we removed the regulated portion of San Diego and Riverside Counties, CA, from the list of regulated areas based on our determination that the Mexican fruit fly had been eradicated from those areas. Upon the effective date of our June 2000 interim rule, there were no longer any areas in California designated as regulated areas because of the Mexican fruit fly.

Comments on each interim rule were required to be received on or before 60 days after the date of its publication in the **Federal Register**. We did not receive any comments on any of the interim rules. Therefore, for the reasons given in the interim rules, we are adopting the interim rules as a final rule.

This action affirms the information contained in the interim rules concerning Executive Orders 12866, 12372, 12988, the Paperwork Reduction Act, and the information contained in the September 1999 and April 2000 interim rules concerning the Regulatory Flexibility Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

## Regulatory Flexibility Act

The following analysis addresses the economic effects and data available to us regarding the actions taken in our December 1999 and June 2000 interim rules.

## Regulated Area

In our December 1999 interim rule, we added a portion of San Diego and Riverside Counties, CA, to the list of areas regulated because of the Mexican fruit fly. Within this regulated area, there are approximately 2,090 small entities that may have been affected by the interim rule. These include 2,000 growers operating on 11,400 acres (72 square miles), 38 packing houses, 50 fruit sellers, and 2 farmers markets. The 2,090 entities, most of which we expect are small entities under Small Business Administration criteria, comprise less than 1 percent of the total number of similar entities operating in the State of California.

Those small entities sell regulated articles primarily for local intrastate, not interstate, movement; therefore, the distribution of regulated articles by those entities was not affected by the interstate movement restrictions contained in the regulations. Many of those entities also handle other items in addition to regulated articles. The effect on those few entities that do move regulated articles interstate was minimized by the availability of various treatments that, in most cases, allowed these small entities to move regulated articles interstate with very little additional cost. Therefore, the economic effect, if any, of the December 1999 interim rule on these entities appears to be minimal. In our June 2000 interim rule, we removed that portion of San Diego and Riverside Counties, CA, from the list of areas regulated because of the Mexican fruit fly and removed California from the list of States regulated because of the Mexican fruit fly. The June 2000 interim rule removed restrictions on the interstate movement of regulated articles from that portion of San Diego and Riverside Counties, CA.

In our December 1999 interim rule, we specifically invited comments concerning the potential economic effects of that interim rule on small entities. In particular, we requested information that would enable us to determine the number and kind of small entities that might incur benefits or costs from the implementation of the interim rule, including the new treatments for premises and regulated articles contained in that interim rule. We did not receive any comments. Based on the available information, the economic effect of the actions taken in our December 1999 and June 2000 interim appears to be minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

## PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rules that amended 7 CFR part 301 and that were published at 64 FR 52211–52212 on September 28, 1999; 64 FR 71267–71270 on December 21, 1999; 65 FR 20705–20706 on April 18, 2000; and 65 FR 37005–37006 on June 13, 2000.

**Authority:** 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A-293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

Done in Washington, DC, this 27th day of July 2001.

**Bobby R. Acord,**

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

[FR Doc. 01–19515 Filed 8–2–01; 8:45 am]

BILLING CODE 3410–34–U

## NATIONAL CREDIT UNION ADMINISTRATION

## 12 CFR Part 709

## Involuntary Liquidation of Federal Credit Unions and Adjudication of Creditor Claims Involving Federally-Insured Credit Unions in Liquidation

**AGENCY:** National Credit Union Administration.

**ACTION:** Final rule.

**SUMMARY:** The National Credit Union Administration (NCUA) is issuing a final rule clarifying that as conservator or liquidating agent of a federally-insured credit union, the NCUA Board (Board) will honor a claim for prepayment fees by a Federal Home Loan Bank under the circumstances set forth in the rule.

**DATES:** The rule is effective September 4, 2001.

**FOR FURTHER INFORMATION CONTACT:** Chrisanthy J. Loizos, Staff Attorney, Division of Operations, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6540.

**SUPPLEMENTARY INFORMATION:** The Board issued an interim final rule addressing a statutory exception to the Board's repudiation powers, when acting as a conservator or liquidating agent, for extensions of credit from a Federal Home Loan Bank to a federally-insured credit union. 66 FR 11229 (Feb. 23, 2001). The final rule is identical to the interim final rule except for one minor technical amendment that corrects an inaccurate statutory citation.

Federally-insured credit unions (FICUs) are eligible for membership at the Federal Home Loan Bank (FHLB) in their district provided they meet certain statutory requirements. 12 U.S.C. 1422(12)(B), 1424. As a member of an FHLB, an FICU may obtain a variety of advances for the purpose of providing funds for housing loans. *See* 12 U.S.C. 1430(a), (j).

The Board, when acting as a conservator or liquidating agent of an FICU, has the discretion to disaffirm or repudiate contracts or leases (i) to which the FICU is a party; (ii) the performance of which the Board determines to be burdensome; and (iii) the disaffirmance or repudiation of which the Board determines will promote the orderly administration of the FICU's affairs. 12 U.S.C. 1787(c)(1). The Federal Credit Union Act establishes an exception to the Board's authority to repudiate contracts entered into by an FICU before the Board is appointed the FICU's conservator or liquidating agent. The Board may not repudiate a contract regarding an extension of credit from any FHLB to an FICU. 12 U.S.C. 1787(c)(13).

The final rule sets forth the circumstances under which the Board, as conservator or liquidating agent, will honor a claim for prepayment fees by an FHLB when an FICU has an outstanding extension of credit with the FHLB. The rule allows the payment of a prepayment fee to an FHLB if set forth in a written contract, provided: (1) That the fee does not exceed the present value of any economic loss suffered by the FHLB; and, (2) the collateral is sufficient to pay in full the principal and interest due on secured advances and the applicable prepayment fee.

The rule tracks one used by the Federal Deposit Insurance Corporation (FDIC) when federally-insured banks with extensions of credit from an FHLB are conserved or placed in receivership. *See* 12 CFR 360.2(e). Like the Board, the FDIC has the statutory authority to repudiate contracts when appointed conservator or receiver for a bank under section 11(e) of the Federal Deposit Insurance Act, but it is prohibited from repudiating extension of credit agreements with FHLBs. 12 U.S.C. 1821(e).

**Comments**

The comment period ended on April 24, 2000. The Board received eight comments on the interim final rule. One credit union, one national credit union trade group, three state credit union leagues, one corporate credit union, one corporate credit union trade group and an association representing state regulators nationwide submitted comments. Of the commenters who commented on the general merits of the rule, all supported the Board's adoption of the rule. One commenter noted that the statutory provision that prohibits the Board from repudiating terms of a loan agreement with a FHLB is adequate without a rule. Two commenters stated that the rule places credit unions on equal footing with other depository institutions that obtain advances from FHLBs. One commenter specifically mentioned that prior to the rule, certain FICUs could not obtain long-term advances from the FHLB in their district.

Five commenters requested the Board extend the application of the rule to loan advances from corporate credit unions. One expressed concern that the rule shows a preference for FHLBs, but acknowledged that the rule is consistent with the statutory prohibition. This commenter noted that corporate credit

unions, like FHLBs, make long-term advances to members and may suffer opportunity or real losses from prepayments. Two commenters asked that the Board recognize the role of corporates, in the credit union movement and as liquidity providers for natural-person credit unions, by honoring their claims for prepayment fees.

The Board may consider the comments regarding extensions of credit by corporate credit unions in another rulemaking. The Board issued § 709.12 as an interim final rule based on having made the requisite findings for issuance of an interim final rule as required by the Administrative Procedure Act. 5 U.S.C. 553. The Board believes an amendment of Part 709 limiting the Board's authority as conservator or liquidating agent to repudiate corporate credit union advances would require an opportunity for public notice and comment.

**Regulatory Procedures**

*Regulatory Flexibility Act*

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small entities. For purposes of this analysis, credit unions under $1 million in assets will be considered small entities.

The NCUA Board has determined and certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule allows FICUs that are members of Federal Home Loan Banks to receive advances at lower rates of interest for the benefit of their members without any additional regulatory burden or expense to credit unions. Accordingly, the NCUA has determined that a Regulatory Flexibility Analysis is not required.

*Paperwork Reduction Act*

NCUA has determined that this rule does not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

*Small Business Regulatory Enforcement Fairness Act*

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this is not a major rule.

*Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rule will apply to some state-chartered credit unions, but it will not have substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

**List of Subjects in 12 CFR Part 709**

Credit unions, Liquidations.

By the National Credit Union Administration Board, on July 26, 2001.

**Becky Baker,**

*Secretary of the Board.*

For the reasons stated above, NCUA amends 12 CFR part 709 as follows:

## PART 709—INVOLUNTARY LIQUIDATION OF FEDERAL CREDIT UNIONS AND ADJUDICATION OF CREDITOR CLAIMS INVOLVING FEDERALLY-INSURED CREDIT UNIONS IN LIQUIDATION

1. The authority citation for part 709 continues to read as follows:

**Authority:** 12 U.S.C. 1757, 1766, 1767, 1786, 1787, 1788, 1789, 1789a.

2. Amend § 709.0 by revising the first sentence to read as follows:

**§ 709.0 Scope.**

The rules and procedures in this part apply to charter revocations of federal credit unions under 12 U.S.C. 1787(a)(1)(A), (B), the involuntary liquidation and adjudication of creditor claims in all cases involving federally-insured credit unions, the treatment by the Board as conservator or liquidating agent of financial assets transferred in connection with a securitization or participation or of public funds held by a federally-insured credit union, and the allowance of prepayment fees to Federal Home Loan Banks under specified conditions. * * *

3. Revise § 709.12 to read as follows:

**§ 709.12 Prepayment fees to Federal Home Loan Bank.**

The Board as conservator or liquidating agent of a federally-insured credit union in receipt of any extension of credit from a Federal Home Loan Bank will allow a claim for a prepayment fee by the Bank if:

(a) The claim is made pursuant to a written contract that provides for a prepayment fee but the prepayment fee allowed by the Board will not exceed the present value of the loss attributable to the difference between the contract rate of the secured borrowing and the reinvestment rate then available to the Bank; and

(b) The indebtedness owed to the Bank is secured by sufficient collateral in which a perfected security interest in favor of the Bank exists or as to which the Bank's security interest is entitled to priority under section 306(d) of the Competitive Equality Banking Act of 1987, 12 U.S.C. 1430(e), or otherwise so that the aggregate of the outstanding principal on the advances secured by the collateral, the accrued but unpaid interest on the outstanding principal and the prepayment fee applicable to the advances can be paid in full from the amounts realized from the collateral. For purposes of this paragraph, the adequacy of the collateral will be determined as of the date the prepayment fees are due and payable under the terms of the written contract.

[FR Doc. 01–19102 Filed 8–2–01; 8:45 am]

BILLING CODE 7535–01–P

---

## NATIONAL CREDIT UNION ADMINISTRATION

## 12 CFR Part 712

## Credit Union Service Organizations (CUSOs)

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** NCUA is revising its rule concerning federal credit union (FCU) investments in and loans to credit union service organizations (CUSOs). The first change clarifies that the list of permissible activities in the CUSO regulation is intended to establish broad categories of permissible activities. The listing of particular activities under these categories is for illustrative purposes and not exhaustive of activities that may be permissible. In conjunction with this change, the provision for adding new activities to the regulation is amended to encourage FCUs to seek an advisory opinion from

the Office of General Counsel on whether a proposed activity falls within one of the authorized categories before requesting a regulatory amendment. The final change adds a federally-chartered corporation to the category of permissible structures for CUSOs.

**DATES:** This rule is effective September 4, 2001.

**FOR FURTHER INFORMATION CONTACT:** Mary Rupp, Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone (703) 518–6540.

**SUPPLEMENTARY INFORMATION:**

## Background

On February 15, 2001, the NCUA Board requested comment on proposed changes to part 712 of its regulations. 66 FR 11125 (February 22, 2001). Part 712 sets forth the requirements for FCUs investing or lending to CUSOs. The first proposed amendment was a clarification of an existing authority and the second proposed amendment was an expansion of an existing authority.

## Summary of Comments

The NCUA Board received 26 comments on the proposal: 16 from credit unions; one from a CUSO; two from credit union trade groups; one from a CUSO trade group; five from credit union leagues; and one from a bank trade group. Below is a summary of the comments.

*Clarification That the List of Permissible Activities Establishes Broad Categories and the Particular Activities Under These Broad Categories are for Illustrative Purposes*

The first proposed change clarified that the list of permissible activities in § 712.5 is intended to establish broad categories of permissible activities and that the listing of particular activities under these broad categories is for illustrative purposes and not meant to be exhaustive. Nineteen commenters fully supported the proposed change; five commenters objected because they thought the change should be more expansive; and one commenter, the bank trade group, objected to the expansion. The commenters in support of the proposal noted that the amendment would allow the rule to accommodate technological advances and a broader scope of business practices, as well as allow CUSOs to offer a variety of new and innovative products that will fit within the general categories. One of those commenters noted that the proposal provides an adequate illustration of the types of activities that are permissible without the loss of flexibility that would result from a list of specific activities. One commenter noted that the approved list of activities is only the beginning of what a CUSO can do and with the test of ''relate to the routine daily operations'' there is sufficient guidance.

Some of the commenters in support of further expansion suggested using the same approach as the approach taken in the incidental powers proposal. This amendment, in fact, is modeled after the incidental powers proposal. One commenter suggested using the same test for permissibility of a CUSO activity as is used to determine permissibility of an incidental powers activity. This commenter fails to recognize that the legal authority for an incidental powers activity is different from the legal authority for a CUSO activity. Incidental powers activities are governed by § 1757(17) of the Federal Credit Union Act (Act) and CUSO activities are governed by § 1757(5)(D) and (7)(I) of the Act. The statute is clear that an activity that is necessary for a credit union to carry on effectively the business for which it is incorporated is a permissible incidental powers activity. This is different than the statutory standard for a permissible CUSO activity, which is limited to activities that relate to the routine daily operations of credit unions.

A few commenters suggested the list is too restrictive, should include more examples, and should be an appendix to the rule, rather than in the rule. When the Board revised the list of permissible CUSO activities in its 1998 overhaul of the CUSO rule, an effort was made to include all permissible activities relating to the routine operations of credit unions. 63 FR 10743 (March 5, 1998). The Board is not aware of any activities relating to the routine operations of credit unions that were not either, considered and rejected, or included at that time and so, it will not be revising the list.

One commenter suggested adding business loan origination and consumer loan origination to the list of permissible activities. The Board specifically addressed both business and consumer loan origination in its 1998 revisions to the CUSO regulation and has not changed its view as to the proper role of CUSOs in this area.[1] As it noted then, the Board believes that, while CUSOs are not authorized to originate consumer loans, other than mortgage loans, or business loans, they may provide support services to credit unions for both types of loan.

*Suggestion To Seek an Advisory Opinion From the Office of General Counsel (OGC)*

Fifteen of the 20 commenters that responded to this issue supported the proposal. One of those commenters noted that this provision is especially helpful because it does not require an opinion if the credit union believes the activity is within the stated categories and can justify it if challenged.

Only one of the five negative commenters, the bank trade group, objected to this provision because it is too permissive. Some of the negative commenters suggested that the decision of whether an activity falls within a broad category should be made by the credit unions and their attorneys, not NCUA. The Board agrees and states that the rule does not require a credit union to come to OGC for an opinion every time a CUSO wants to engage in an activity not specifically listed as an example under a broad category. An opinion from OGC is recommended if there is doubt as to whether a specific activity falls within one of the broad categories or a new broad category is being proposed. In those situations, an FCU that doesn't consult with OGC runs the risk of engaging in an impermissible activity and being subject to supervisory action.

One commenter suggested that if an activity is ''convenient and useful'' the credit union's attorney should decide if it is permissible. As noted above, the test for CUSOs is not the ''convenient and useful'' test associated with incidental powers activities. The test for CUSOs, as stated in the rule and the Act, is that the activity must relate to the ''routine, daily operations of credit

[1] Regarding consumer and business loan origination as a CUSO activity, the Board stated:

After due consideration of the comments, NCUA remains opposed to this addition [consumer loan origination]. Unlike consumer mortgage loan origination, which requires a specialized lending staff, must follow strict secondary mortgage market rules, and requires economies of scale in order to be viable, consumer loans are relatively easy to offer and process. In addition, NCUA is apprehensive in granting CUSOs the authority to provide consumer loans to the general public, as it may be perceived as a dilution of the common bond by Congress and the public.

* * * [W]hile CUSOs can only approve and fund consumer mortgages and student loans, CUSOs can engage in many back office aspects of lending * * *. In essence, CUSOs can provide back office underwriting, processing and servicing functions to enable a credit union to offer loans * * *. In other words, FCUs are permitted to leverage their member business loan expertise with CUSO business loan personnel. This clarification is made to assist FCUs in expanding the number and type of business loans made to its members in conjunction with the member business loan amendments proposed in 62 FR 41313 (August 1, 1997).

*Id.* at 10752.

unions.'' 12 U.S.C. 1757(7)(I); 12 CFR 712.5.

*Addition of a Federally-Chartered Corporation as a Permissible CUSO Structure*

The 21 commenters that responded to this issue agreed with allowing a federally-chartered corporation as a permissible CUSO structure. A few of those commenters suggested that the Board define ''depository institution'' in the CUSO rule so as to exclude from the definition an institution principally engaged in the business of providing trust services that holds only such deposits as are required to qualify for FDIC insurance. The commenters requested this definition so that a CUSO could obtain a trust charter from the Office of Thrift Supervision (OTS).

While the Act prohibits an FCU from acquiring control directly or indirectly of a financial institution, trust services have been identified as a permissible activity for CUSOs for almost twenty years. 12 U.S.C. 1757(7)(I); 47 FR 30462 (July 14, 1982). The NCUA's long-standing interpretation of financial institution has been that it means a deposit taking institution. 51 FR 10353, 10354 (March 26, 1986). The CUSO regulation reflects this policy and states that FCUs may not acquire control of ''another depository financial institution.'' 12 CFR 712.6. Thus, NCUA has viewed trust companies as permissible CUSOs as long as they were not deposit taking organizations.

The OTS requires Federal Deposit Insurance Corporation (FDIC) insurance for all institutions it charters. 12 CFR 543.2. Under the Federal Deposit Insurance Act (FDI Act), an applicant for insurance must be ''engaged in the business of receiving deposits other than trust funds.'' 12 U.S.C. 1815(a)(1). In March 2000, the FDIC interpreted this requirement in General Counsel Opinion No. 12, stating that this requirement can be satisfied if an institution maintains one or more non-trust deposit accounts in the aggregate amount of $500,000. 66 FR 20102, Appendix (April 19, 2001). The opinion was intended to clarify the meaning of the requirement, particularly in the context of the FDIC's long-standing interpretation of non-traditional depositories such as trust companies.

Recently, the FDIC issued a proposed rule that would incorporate its General Counsel Opinion No. 12. 66 FR 20102. The proposed rule contains an extensive discussion of the ambiguity of the FDI Act and various factors that led to issuance of the legal opinion. The impetus for the proposed rule is a recent federal court decision, discussed in the preamble to the proposed rule, in which the court disagreed with the FDIC's interpretation of this requirement. The FDIC states that the inconsistency between its interpretation and that of the court could have harmful results and has determined to address the issue in a rulemaking. *Id.* at 20105.

While the Board agrees with the commenters that ''depository financial institution'', as used in 12 CFR 712.6, should not include a financial institution principally engaged in the business of providing trust services, and which holds only such deposit as is required for FDIC insurance, the Board is not inclined to include a definition in the regulation at this time. A regulatory definition adopted now might not adequately address issues that will be considered in the FDIC's rulemaking or in the pending litigation. Further, the Board does not believe it is necessary to include a definition as part of the regulation but, as necessary, NCUA's Office of General Counsel may provide further interpretation, in addition to that stated in this preamble.

One commenter suggested an FCU's trust powers be expanded in NCUA's incidental powers rule and that the Act be amended to allow NCUA to charter trust companies. Another commenter suggested adding a new structure that would allow a CUSO to be established under foreign law so that it could serve foreign nationals. These suggestions are outside the scope of this rulemaking process.

**Final Amendments**

*Section 712.3(a)*

The Board is revising this provision to include federally-chartered corporations as a permissible CUSO structure.

*Section 712.5*

The Board is adding a sentence to this section to state plainly that the listings under the broad categories are for illustrative purposes and not intended to be an exclusive or exhaustive list of permissible activities.

*Section 712.7*

The Board is amending the provision for adding new activities to the regulation to advise FCUs to seek an advisory opinion from OGC as to whether a proposed activity fits into one of the authorized categories before requesting a regulatory change to add a new activity. An FCU is not required to seek an advisory opinion if a proposed activity, not listed as an example, clearly falls within one of the broad categories approved by the Board.

This amendment in conjunction with the change to § 712.5 will reduce regulatory burden by allowing the rule to expand as technology expands.

**Regulatory Procedures**

*Regulatory Flexibility Act*

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities (primarily those under 1 million in assets). The amendments will not have a significant economic impact on a substantial number of small credit unions and, therefore, a regulatory flexibility analysis is not required.

*Paperwork Reduction Act*

NCUA has determined that this final rule does not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

*Small Business Regulatory Enforcement Fairness Act*

The Small Business Regulatory Enforcement Fairness Act of 1966 (SBREFA) (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Management and Budget is reviewing this rule to determine if it is a major rule for purposes of SBREFA.

*Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rule will apply only to federally-chartered credit unions. 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. NCUA has determined that this proposal does not constitute a policy that has federalism implications for purposes of the executive order.

*The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families*

The NCUA has determined that this rule will not affect family well-being within the meaning of section 654 of the

Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

*Agency Regulatory Goal*

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We requested comments on whether the proposed rules were understandable and minimally intrusive if implemented as proposed. We received three comments on this issue. Two commenters did not address the proposal, but rather stated that the question and answer format of the CUSO rule is confusing. One commenter stated that the proposal does meet the agency's regulatory goal.

**List of Subjects in 12 CFR Part 712**

Administrative practices and procedure, Credit, Credit unions, Investments, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on July 26, 2001.

**Becky Baker,**

*Secretary of the Board.*

Accordingly, NCUA amends 12 CFR part 712 as follows:

## PART 712—CREDIT UNION SERVICE ORGANIZATIONS (CUSOs)

1. The authority citation for part 712 continues to read as follows:

**Authority:** 12 U.S.C. 1756, 1757(5)(D), and (7)(I), 1766, 1782, 1784, 1785 and 1786.

2. Amend § 712.3 by revising the third sentence of paragraph (a) to read as follows:

**§ 712.3 What are the characteristics of and what requirements apply to CUSOs?**

(a) *Structure.* * * * For purposes of this part, ''corporation'' means a legally incorporated corporation as established and maintained under relevant federal or state law. * * *

* * * * *

4. Amend § 712.5 by revising the second sentence and adding a third sentence to the introductory paragraph to read as follows:

**§ 712.5 What activities and services are preapproved for CUSOs?**

* * * Otherwise, an FCU may invest in, loan to, and/or contract with only those CUSOs that are sufficiently bonded or insured for their specific operations and engaged in the preapproved activities and services related to the routine daily operations of credit unions. The specific activities listed within each preapproved category are provided in this section as illustrations of activities permissible under the particular category, not as an exclusive or exhaustive list.

* * * * *

5. Add a sentence to the end of § 712.7 to read as follows:

**§ 712.7 What must an FCU do to add activities or services that are not preapproved?**

* * * Before you engage in the petition process, you should seek an advisory opinion from NCUA's Office of General Counsel as to whether a proposed activity is already covered by one of the authorized categories without filing a petition to amend the regulation.

[FR Doc. 01–19106 Filed 8–2–01; 8:45 am]

BILLING CODE 7535–01–U

---

## NATIONAL CREDIT UNION ADMINISTRATION

## 12 CFR Part 749

## Records Preservation Program

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** NCUA is revising its regulation establishing standards for vital record preservation. The revised regulation clarifies that a credit union may preserve records in electronic form, as authorized by the Electronic Signatures in Global and National Commerce Act. The revision permits a credit union's board of directors to determine which employee will be responsible for storing vital records under the record preservation program, in contrast to the current regulation which names the credit union's financial officer. It also incorporates an appendix to provide suggested guidelines to credit unions on retention periods for various types of records.

**EFFECTIVE DATE:** This rule is effective September 4, 2001.

**FOR FURTHER INFORMATION CONTACT:** Dianne M. Salva, Staff Attorney, Division of Operations, Office of General Counsel, at 1775 Duke Street, Alexandria, Virginia 22314, or telephone: (703) 518–6540.

**SUPPLEMENTARY INFORMATION:**

### Background

NCUA published a proposal to revise its regulation governing the preservation of vital records. 66 FR 11239, February 23, 2001. At the end of the sixty-day public comment period, NCUA had received eleven comment letters. After carefully considering the comments, the NCUA Board is publishing this final rule, which is substantially identical to the proposal. Only one minor change was made to the appendix to the regulation: the reference to 5300 financial reports as semiannual and annual filings has been omitted since some credit unions now file such reports quarterly.

The revision makes three substantive modifications to the regulation and changes the format to question and answer. First, the revision clarifies that credit unions may store records in any format that is accurate, accessible and capable of being reproduced by printing, transmittal or other methods, as permitted by the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001. Second, it permits a credit union's board of directors to determine which employee will be responsible for carrying out the vital record preservation duties. The current regulation requires that the credit union's financial officer be designated as responsible for those duties. Third, to address the need for guidance about record retention, the revision incorporates an appendix on recommended retention periods for various types of credit union records.

### Comments

NCUA received eleven comment letters, all of which expressed general support for the proposal. Four comments letters were from credit unions; two were from national credit union trade associations; four were from state credit union leagues; and one was from a credit union service provider.

Eight commenters strongly supported the change to the regulation to clarify that credit unions may retain records electronically.

Five commenters expressed approval for the addition of the appendix containing record retention guidelines. Of these, three suggested various changes in the guidance for retention periods and types of records that must be retained. The NCUA Board notes that the record retention guidelines are merely recommendations and credit unions may adopt other retention periods for these or other types of records.

Five commenters strongly supported the change to the regulation permitting a credit union's board of directors to determine which employee will be responsible for vital record preservation. Two commenters favored eliminating the requirement that the credit union's financial officer be responsible for vital records preservation but suggested that the credit union manager, rather than the board should determine which employee to designate. The NCUA Board did not adopt that suggestion in

the final rule. The Board believes that a credit union's board of directors is in the best position to know who among the credit union staff should be responsible for carrying out the important responsibilities of the vital records preservation program. In revising this regulation to eliminate the requirement that designated the financial officer as responsible, the NCUA Board does not want to replace it with another provision removing the ability and responsibility of a credit union's board of directors to make the selection itself.

NCUA requested comment concerning whether the rule is understandable and minimally intrusive. One commenter praised the rule for being clear and understandable. Two commenters expressed dislike for the question and answer format. One commenter, while acknowledging that the proposal is designed to be more user friendly, questioned whether the question and answer format makes the rule easier to understand. The NCUA Board finds that the question and answer format is understandable and is appropriate for this regulation. One commenter suggested that additional records, sufficient for auditing or to detect fraud, should be included among vital records. Two commenters suggested that the term ''vital record'' should be defined with more specificity and the description should be augmented with more examples. The Board notes that the proposed rule did not materially alter the description of vital records from that in the current regulation. To give credit unions maximum flexibility, the description of vital records is brief and lists only the minimum types of records included. A credit union may include additional records it determines would be necessary to carry on its business in the event of a catastrophe.

## Regulatory Procedures

*Paperwork Reduction Act*

This regulation will impose no additional information collection, reporting or record keeping requirements.

*Regulatory Flexibility Act*

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), NCUA certifies that these amendments will not have a significant economic impact on a substantial number of small entities. NCUA expects that these regulations will not: (1) Have significant secondary or incidental effects on a substantial number of small entities; or (2) create any additional burden on small entities. Accordingly, a regulatory flexibility analysis is not required.

*Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the Executive Order. Since this regulation will only apply to federal credit unions, it will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*Small Business Regulatory Enforcement Fairness Act*

The Office of Management and Budget has determined that this rule is not major for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

## List of Subjects in 12 CFR Part 749

Archives and records, Credit unions, Reporting and recordkeeping requirements.

**Becky Baker,**

*Secretary of the Board.*

For the reasons set forth in the preamble, 12 CFR Part 749 is revised to read as follows:

# PART 749—RECORDS PRESERVATION PROGRAM AND RECORD

## Retention Appendix

Sec.

749.0 What is covered in this part?
749.1 What are vital records?
749.2 What must a credit union do with vital records?
749.3 What is a vital records center?
749.4 What format may the credit union use for preserving records?
749.5 What format may credit unions use for maintaining writings, records or information required by other NCUA regulations?
Appendix A to Part 749—Record Retention Guidelines

**Authority:** 12 U.S.C. 1766, 1783 and 1789, 15 U.S.C. 7001(d).

### § 749.0 What is covered in this part?

This part describes the obligations of all federally insured credit unions to maintain a records preservation program to identify, store and reconstruct vital records in the event that the credit union's records are destroyed. It establishes flexibility in the format credit unions may use for maintaining writings, records or information required by other NCUA regulations. The appendix also provides guidance concerning the appropriate length of time credit unions should retain various types of operational records.

### § 749.1 What are vital records?

Vital records include at least the following records, as of the most recent month-end:

(a) A list of share, deposit, and loan balances for each member's account which:

(1) Shows each balance individually identified by a name or number;

(2) Lists multiple loans of one account separately; and

(3) Contains information sufficient to enable the credit union to locate each member, such as address and telephone number, unless the board of directors determines that the information is readily available from another source.

(b) A financial report, which lists all of the credit union's asset and liability accounts and bank reconcilements.

(c) A list of the credit union's financial institutions, insurance policies, and investments. This information may be marked ''permanent'' and stored separately, to be updated only when changes are made.

### § 749.2 What must a credit union do with vital records?

The board of directors of a credit union is responsible for establishing a vital records preservation program within 6 months after its insurance certificate is issued. The vital records preservation program must contain procedures for storing duplicate vital records at a vital records center and must designate the staff member responsible for carrying out the vital records duties. Records must be stored every 3 months, within 30 days after the end of the 3-month period. Previously stored records may be destroyed when the current records are stored. The credit union must also maintain a records preservation log showing what records were stored, where the records were stored, when the records were stored, and who sent the records for storage. Credit unions, which have some or all of their records maintained by an off-site data processor, are considered to be in compliance for the storage of those records.

### § 749.3 What is a vital records center?

A vital records center is defined as a storage facility at any location far enough from the credit union's offices to

avoid the simultaneous loss of both sets of records in the event of disaster.

**§ 749.4 What format may the credit union use for preserving records?**

Preserved records may be in any format that can be used to reconstruct the credit union's records. Formats include paper originals, machine copies, micro-film or fiche, magnetic tape, or any electronic format that accurately reflects the information in the record, remains accessible to all persons who are entitled to access by statute, regulation or rule of law, and is capable of being reproduced by transmission, printing or otherwise.

**§ 749.5 What format may credit unions use for maintaining writings, records or information required by other NCUA regulations?**

Various NCUA regulations require credit unions to maintain certain writings, records or information. Credit unions may use any format, electronic or other, for maintaining the writings, records or information that accurately reflects the information, remains accessible to all persons who are entitled to access by statute, regulation or rule of law, and is capable of being reproduced by transmission, printing or otherwise. The credit union must maintain the necessary equipment or software to permit an examiner access to the records during the examination process.

## Appendix A to Part 749—Record Retention Guidelines

Credit unions often look to NCUA for guidance on the appropriate length of time to retain various types of operational records. NCUA does not regulate in this area, but as an aid to credit unions it is publishing this appendix of suggested guidelines for record retention. NCUA recognizes that credit unions must strike a balance between the competing demands of space, resource allocation and the desire to retain all the records that they may need to conduct their business successfully. Efficiency requires that all records that are no longer useful be discarded, just as both efficiency and safety require that useful records be preserved and kept readily available.

*A. What Format Should the Credit Union Use for Retaining Records?*

NCUA does not recommend a particular format for record retention. If the credit union stores records on microfilm, microfiche, or in an electronic format, the stored records must be accurate, reproducible and accessible to an NCUA examiner. If records are stored on the credit union premises, they should be immediately accessible upon the examiner's request; if records are stored by a third party or off-site, then they should be made available to the examiner within a reasonable time after the examiner's request. The credit union must maintain the necessary equipment or software to permit an examiner to review and reproduce stored records upon request. The credit union should also ensure that the reproduction is acceptable for submission as evidence in a legal proceeding.

*B. Who Is Responsible for Establishing a System for Record Disposal?*

The credit union's board of directors may approve a schedule authorizing the disposal of certain records on a continuing basis upon expiration of specified retention periods. A schedule provides a system for disposal of records and eliminates the need for board approval each time the credit union wants to dispose of the same types of records created at different times.

*C. What Procedures Should a Credit Union Follow When Destroying Records?*

The credit union should prepare an index of any records destroyed and retain the index permanently. Destruction of records should ordinarily be carried out by at least two persons whose signatures, attesting to the fact that records were actually destroyed, should be affixed to the listing.

*D. What Are the Recommended Minimum Retention Times?*

Record destruction may impact the credit union's legal standing to collect on loans or defend itself in court. Since each state can impose its own rules, it is prudent for a credit union to consider consulting with local counsel when setting minimum retention periods. A record pertaining to a member's account that is not considered a vital record may be destroyed once it is verified by the supervisory committee. Individual Share and Loan Ledgers should be retained permanently. Records, for a particular period, should not be destroyed until both a comprehensive annual audit by the supervisory committee and a supervisory examination by the NCUA have been made for that period.

*E. What Records Should Be Retained Permanently?*

1. Official records of the credit union that should be retained permanently are:

(a) Charter, bylaws, and amendments.

(b) Certificates or licenses to operate under programs of various government agencies, such as a certificate to act as issuing agent for the sale of U.S. savings bonds.

(c) Current manuals, circular letters and other official instructions of a permanent character received from the NCUA and other governmental agencies.

2. Key operational records that should be retained permanently are:

(a) Minutes of meetings of the membership, board of directors, credit committee, and supervisory committee.

(b) One copy of each NCUA 5300 financial report or its equivalent.

(c) One copy of each supervisory committee comprehensive annual audit report and attachments.

(d) Supervisory committee records of account verification.

(e) Applications for membership and joint share account agreements.

(f) Journal and cash record.

(g) General ledger.

(h) Copies of the periodic statements of members, or the individual share and loan ledger. (A complete record of the account should be kept permanently.)

(i) Bank reconcilements.

(j) Listing of records destroyed.

*F. What Records Should a Credit Union Designate for Periodic Destruction?*

Any record not described above is appropriate for periodic destruction unless it must be retained to comply with the requirements of consumer protection regulations. Periodic destruction should be scheduled so that the most recent of the following records are available for the annual supervisory committee audit and the NCUA examination. Records that may be periodically destroyed include:

(a) Applications of paid off loans.

(b) Paid notes.

(c) Various consumer disclosure forms, unless retention is required by law.

(d) Cash received vouchers.

(e) Journal vouchers.

(f) Canceled checks.

(g) Bank statements.

(h) Outdated manuals, canceled instructions, and nonpayment correspondence from the NCUA and other governmental agencies.

[FR Doc. 01–19104 Filed 8–2–01; 8:45 am]

BILLING CODE 7535–01–P

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 23

**[Docket No. CE165; Special Conditions No. 23–109–SC]**

## Special Conditions: Ayres Corporation; Model LM 200, ''Loadmaster''; Flight

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

**ACTION:** Final special conditions.

**SUMMARY:** These special conditions are issued for the Ayres Corporation, Model LM 200 airplane. This airplane will have novel or unusual design feature(s) associated with centerline thrust. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**EFFECTIVE DATE:** September 4, 2001.

**FOR FURTHER INFORMATION CONTACT:** Lowell Foster, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate,

ACE–111, 901 Locust, Room 301, Kansas City, Missouri, 816–329–4125, fax 816–329–4090.

**SUPPLEMENTARY INFORMATION:**

## Background

On February 9, 2001, Ayres Corporation applied for a type certificate for their new Model LM 200 ''Loadmaster.'' The Model LM 200 operates with a multiengine/single propeller propulsion system and fixed landing gear. The system consists of two turbine engines driving a single propeller through a combining gearbox. The aircraft is conventional, semi-monocoque, aluminum construction with a high cantilever wing, fixed gear, mechanical and electro-mechanical controls, and it will be unpressurized. Certification will include single pilot and IFR operations.

It is not possible for this airplane to have literal compliance with some commuter category flight test regulations. The Model LM 200 must comply with all commuter category multiengine requirements; however, since this propulsion system will result in centerline thrust, this airplane will not have a $V_{MC}$ or $V_{MCG}$. The propeller is independent of both or either engine such that, with the failure of an engine, the propeller will continue to operate normally but with less torque input. The propeller control system does have failure modes independent of both engines that need to be considered when determining airplane performance. 14 CFR part 23 does not contain adequate or appropriate requirements to address a multiengine/single propeller design that results in centerline thrust.

## Type Certification Basis

Under the provisions of 14 CFR 21.17, Ayres Corporation must show that the Model LM 200 ''Loadmaster'' meets the applicable provisions of part 23, as amended by Amendments 23–1 through 23–53, thereto.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 23) do not contain adequate or appropriate safety standards for the Ayres Corporation Model LM 200 ''Loadmaster'' because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model LM 200 must comply with the part 23 fuel vent and exhaust emission requirements of 14 CFR part 34 and the part 23 noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

Special conditions, as appropriate, as defined in 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

## Novel or Unusual Design Features

The Model LM 200 will incorporate the following novel or unusual design features: The Model LM 200 will operate with a multiengine/single propeller propulsion system.

## Applicability

As discussed above, these special conditions are applicable to the Model LM 200. Should Ayres Corporation apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

## Discussion of Comments

Notice of proposed special conditions No. 23–01–02–SC for the Ayres Corporation Model LM 200 ''Loadmaster'' airplane was published on May 8, 2001 (66 FR 23199). No comments were received, and the special conditions are adopted as proposed.

## Conclusion

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

## List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

## Citation

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

### The Special Conditions

Accordingly, as delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Ayres Corporation Model LM 200 airplanes.

### Flight Test Special Conditions

1. In addition to the requirements in § 23.51(c)(1)(i), VEF is also a propeller control system failure speed where the propeller primary control system fails to the configuration most critical to producing thrust, considering all single point failures. The applicant must establish $V_{EF}$ to be related to the stall speed, and it must not be less than 1.05 $V_{S1}$ or greater than 1.2 $V_{S1}$.

2. In addition to the requirements in § 23.51(c)(3), to determine a single value for $V_R$, the applicant must determine and use the most critical of either the one engine inoperative (OEI) configuration or the most critical failed propeller primary control system configuration, whichever is worse. The failed propeller control system configuration must consider all single point failures with both engines operating normally.

3. In addition to the requirement in § 23.51(c)(5), the applicant must determine and use the most critical of either the OEI configuration or the most critical failed propeller primary control system configuration, whichever is worse. The failed propeller control system must consider all single point failures, with both engines operating normally.

4. In § 23.63, where the OEI configuration is required, the applicant must also assume the condition where both engines are operating normally and the propeller primary control system has failed. In the failed propeller primary control system configuration, the applicant must consider all single point failures that result in a propeller configuration most critical to producing thrust.

5. In addition to the requirements in § 23.75(g), the applicant must also determine the increase in landing distance due to failure of the propeller primary control system. This configuration includes both engines operating normally and the propeller primary control system failed to the most critical thrust producing condition considering all single point failures.

Issued in Kansas City, Missouri on July 16, 2001.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 01–19365 Filed 8–2–01; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2001–NM–195–AD; Amendment 39–12364; AD 2001–15–29]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A330–301, –321, –322, –341, and –342 Series Airplanes and Airbus Model A340 Series Airplanes

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

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

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A330–301, –321, –322, and –342 series airplanes and certain Airbus Model A340 series airplanes, that currently requires reinforcement of the wing structure at the inboard pylon rear pickup area. This amendment revises the applicability to include additional airplanes. The actions specified by this AD are intended to prevent fatigue cracking of the bottom skin and reinforcing plate of the wing due to bending, which could lead to reduced structural integrity of the airplane wing. This action is intended to address the identified unsafe condition.

**DATES:** Effective August 20, 2001.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of May 14, 2001 (66 FR 21074, April 27, 2001).

Comments for inclusion in the rules docket must be received on or before September 4, 2001.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket Number 2001–NM–195–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–195–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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

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

**SUPPLEMENTARY INFORMATION:** On April 19, 2001, the FAA issued AD 2001–08–25, amendment 39–12202 (66 FR 21074, April 27, 2001). That AD is applicable to certain Airbus Model A330–301, –321, –322, and –342 series airplanes and certain Airbus Model A340 series airplanes. That AD requires reinforcement of the wing structure at the inboard pylon rear pickup area. That AD was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to prevent fatigue cracking of the bottom skin and reinforcing plate of the wing due to bending, which could lead to reduced structural integrity of the airplane wing.

### Actions Since Issuance of Previous Rule

Since the issuance of AD 2001–08–25, the FAA has been advised by the manufacturer that Airbus Model A330–341 series airplanes should have been included in the applicability of that AD. The FAA has determined that Model A330–341 series airplanes were inadvertently omitted from the applicability of that AD.

### FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement.

### Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design that may be registered in the United States at some future time, this AD supersedes AD 2001–08–25 to continue to require reinforcement of the wing structure at the inboard pylon rear pickup area. This AD expands the applicability of the existing AD to include Model A330–341, which was inadvertently omitted from the existing AD.

### Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this AD currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this AD is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, for Model A330 series airplanes to follow Airbus Service Bulletin A330–57–3021, it would require approximately 380 work hours to accomplish the required replacements, at an average labor rate of $60 per work hour. Required parts would cost approximately $44,800 per airplane. Based on these figures, the expected cost of these replacements per airplane would be $67,600.

Also for Model A330 series airplanes, to follow Airbus Service Bulletin A330–54–3005, it would require approximately 36 work hours to accomplish the required replacements, at an average labor rate of $60 per work hour. Required parts would cost approximately $15,774 per airplane. Based on these figures, the expected cost of these replacements per airplane would be $17,934.

For Airbus Model A340 series airplanes, to follow Airbus Service Bulletin A340–57–4025, it would require approximately 380 work hours to accomplish the required replacements, at an average labor rate of $60 per work hour. Required parts would cost approximately $44,800 per airplane. Based on these figures, the expected cost of these replacements per airplane would be $67,600.

Also for Model A340 series airplanes, to follow Airbus Service Bulletin A340–54–4003, it would require approximately 26 work hours to accomplish the required replacements, at an average labor rate of $60 per work hour. Required parts would cost approximately $15,358 per airplane. Based on these figures, the expected cost of these replacements per airplane would be $16,918.

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

**Determination of Rule's Effective Date**

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

**Comments Invited**

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 20011–NM–195–AD.'' The postcard will be date stamped and returned to the commenter.

**Regulatory Impact**

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

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

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–12202 (66 FR 21074, April 27, 2001), and by adding a new airworthiness directive (AD), amendment 39–12364, to read as follows:

**2001–15–29 Airbus Industrie:** Amendment 39–12364. Docket 2001–NM–195–AD. Supersedes AD 2001–08–25, Amendment 39–12202.

*Applicability:* Model A330–301, –321, –322, –341, and –342 series airplanes, as listed in Airbus Service Bulletin A330–57–3021, Revision 03, including Appendices 01 and 02, dated November 5, 1999; and Model A340 series airplanes, as listed in Airbus Service Bulletin A340–57–4025, Revision 02, including Appendices 01 and 02, dated November 5, 1999; certificated in any category.

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

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

To prevent fatigue cracking of the airplane wing bottom skin and reinforcing plate due to wing bending, which could lead to reduced structural integrity of the wing, accomplish the following:

**Modification**

(a) For Model A330 series airplanes, prior to the accumulation of 12,000 total flight cycles or 37,300 total flight hours, whichever occurs first, accomplish the actions required by paragraphs (a)(1) and (a)(2) of this AD.

(1) Prior to, or concurrently with, the accomplishment of the tasks required by paragraph (a)(2) of this AD, replace five existing fillets with five new fillets, one existing firewall with one new firewall, and one existing case drainpipe with one new case drainpipe, and modify the contour milling of the external tip of rib 19A on each of the left and right wing pylons, in accordance with Airbus Service Bulletin A330–54–3005, Revision 01, dated October 19, 1999.

(2) Concurrently with, or subsequent to, the accomplishment of the tasks required by paragraph (a)(1) of this AD, reinforce the wing structure at the inboard pylon rear pickup area on both wings (including performing high-frequency eddy current rototests, corrective actions if necessary, and installing a larger reinforcing plate and packer plate) in accordance with Airbus Service Bulletin A330–57–3021, Revision 03, including Appendices 01 and 02, dated November 5, 1999.

(b) For Model A340 series airplanes, prior to the accumulation of 15,000 total flight cycles or 59,600 total flight hours, whichever occurs first, accomplish the actions required by paragraphs (b)(1) and (b)(2) of this AD.

(1) Prior to, or concurrently with, the accomplishment of the tasks required by paragraph (b)(2) of this AD, reinforce the wing structure at the inboard pylon rear pickup area of both wings (including performing high-frequency eddy current rototests, corrective actions if necessary, and installing a larger reinforcing plate and packer plate) in accordance with Airbus Service Bulletin A340–57–4025, Revision 02, including Appendices 01 and 02, dated November 5, 1999.

(2) Concurrently with, or subsequent to, the accomplishment of the tasks required by paragraph (b)(1) of this AD, replace five existing fillets with five new fillets and one existing firewall with one new firewall on each of the left and right wing inboard pylons, in accordance with Airbus Service Bulletin A340–54–4003, Revision 01, dated April 26, 2000.

(c) If any discrepancy is found during any inspection or rototest required by paragraphs (a)(2) or (b)(1) of this AD, prior to further flight, accomplish applicable repairs in accordance with Airbus Service Bulletin A330–57–3021, Revision 03, including Appendices 01 and 02, dated November 5, 1999 (for Model A330 series airplanes); or Airbus Service Bulletin A340–57–4025, Revision 02, including Appendices 01 and 02, dated November 5, 1999 (for Model A340 series airplanes). If the service bulletin specifies to contact the manufacturer for appropriate action: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (or its delegated agent).

**Note 2:** Accomplishment of the modifications required by paragraphs (a)(1) and (a)(2) or paragraphs (b)(1) and (b)(2) of this AD, prior to the effective date of this AD in accordance with the service bulletins listed in Table 1 of this AD, as follows, is considered acceptable for compliance with the applicable actions this AD:

TABLE 1.—PRIOR SERVICE BULLETINS CONSIDERED ACCEPTABLE FOR COMPLIANCE

| Model | Service bulletin | Revision level | Date |
|---|---|---|---|
| A330 | A330–54–3005 | Original | March 25, 1996. |
| A330 | A330–57–3021 | Original | March 25, 1996. |
| | A330–57–3021 | 01 | September 1, 1998. |
| | A330–57–3021 | 02 | April 9, 1999. |
| A340 | A340–57–4025 | Original | March 25, 1996. |
| | A340–57–4025 | 01 | September 1, 1998. |
| A340 | A340–54–4003 | Original | March 25, 1996. |

**Alternative Methods of Compliance**

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and send it to the manager, International Branch ANM–116.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the international Branch, ANM–116.

**Special Flight Permits**

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

**Incorporation by Reference**

(f) Except as provided by paragraph (c) of this AD, the actions must be done in accordance with Airbus Service Bulletin A330–57–3021, Revision 03, including Appendices 01 and 02, dated November 5, 1999; Airbus Service Bulletin A340–57–4025, Revision 02, including Appendices 01 and 02, dated November 5, 1999; Airbus Service Bulletin A330–54–3005, Revision 01, dated October 19, 1999; and Airbus Service Bulletin A340–54–4003, Revision 01, dated April 26, 2000; as applicable. This incorporation by reference was approved previously by the Director of the Federal Register as of May 14, 2001 (66 FR 21074, April 27, 2001). Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 4:** The subject of this AD is addressed in French airworthiness directives 2000–178–121(B) and 2000–179–147(B), both dated May 3, 2000.

**Effective Date**

(g) This amendment becomes effective on August 20, 2001.

Issued in Renton, Washington, on July 25, 2001.

**Vi L. Lipski,**

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

[FR Doc. 01–19259 Filed 8–2–01; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF LABOR

## Employment and Training Administration

## 20 CFR Part 656

**RIN 1205–AB25**

## Labor Certification Process for the Permanent Employment of Aliens in the United States; Refiling of Applications

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Final rule.

**SUMMARY:** The Employment and Training Administration (ETA) of the Department of Labor (Department or DOL) is amending its regulations relating to the permanent employment of aliens in the United States. This final rule permits employers to request, in certain circumstances, that any labor certification application for permanent employment in the United States that is filed on or before August 3, 2001, be processed as a reduction in recruitment request. ETA anticipates that the amendment will reduce the backlog of labor certification applications for permanent employment in State Employment Security Agencies (SESA's). ETA believes this measure to reduce backlogs will result in a variety of desirable benefits, such as a reduction in processing time for both new applications and those applications currently in the queue, and will facilitate the development and implementation of a new, more efficient, system for processing labor certification applications for permanent employment in the United States.

**EFFECTIVE DATE:** The amendments contained in this final rule will take effect on September 4, 2001.

**FOR FURTHER INFORMATION CONTACT:** Contact Dale M. Ziegler, Chief, Division of Foreign Labor Certifications, Employment and Training Administration, 200 Constitution Avenue, NW., Room C–4318, Washington, DC 20210. Telephone: (202) 693–3010 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## I. Background

Backlogs of applications for permanent alien employment certification have been a growing problem in ETA regional and SESA offices. These increasing backlogs have resulted in an increase in the time it takes to obtain a determination on an application for permanent employment in the United States.

Recent measures to reduce backlogs in ETA's regional offices have met with considerable success. Consequently, ETA is now turning its attention to reducing the number of backlogged cases in SESA's. Instituting measures to reduce backlogs in SESA's without first reducing backlogs in regional offices would not have resulted in a reduction in mean processing time, because it would have merely resulted in transfers of backlogged applications from the SESA's to ETA's regional offices.

On July 26, 2000, the Department published a Proposed Rule in the **Federal Register** soliciting comment on the proposed amendment to the permanent labor certification regulations.

## II. Statutory Standard and Implementing Regulations

Before the Immigration and Naturalization Service (INS) may approve petition requests and the Department of State may issue visas and admit certain immigrant aliens to work permanently in the United States, the Secretary of Labor must first certify to the Secretary of State and to the Attorney General that:

(a) There are not sufficient United States workers, who are able, willing, qualified, and available at the time of the application for a visa and admission into the United States and at the place where the alien is to perform the work; and

(b) The employment of the alien will not adversely affect the wages and working conditions of similarly employed United States workers. [8 U.S.C. 1182(a)(5)(A)].

If the Secretary, through ETA, determines that there are no able, willing, qualified, and available U.S. workers and that employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers, DOL so certifies to the INS and to the Department of State, by issuing a permanent alien labor certification.

If DOL cannot make one or both of the above findings, the application for permanent alien employment certification is denied. DOL may be unable to make the two required findings for one or more reasons, including, but not limited to:

(a) The employer has not adequately recruited U.S. workers for the job offered to the alien, or has not followed the proper procedural steps in 20 CFR part 656.

(b) The employer has not met its burden of proof under section 291 of the Immigration and Nationality Act (INA or Act.) (8 U.S.C. 1361), that is, the employer has not submitted sufficient evidence of its attempts to obtain available U.S. workers, and/or the employer has not submitted sufficient evidence that the wages and working conditions which the employer is offering will not adversely affect the wages and working conditions of similarly employed U.S. workers.

## III. Department of Labor Regulations

The Department of Labor has promulgated regulations, at 20 CFR part 656, governing the labor certification process described above for the permanent employment of immigrant aliens in the United States. Part 656 was promulgated pursuant to section 212(a)(14) of the INA (now at section 212(a)(5)(A)). 8 U.S.C. 1182(a)(5)(A).

The regulations at 20 CFR part 656 set forth the fact-finding process designed to develop information sufficient to support the granting of a permanent labor certification. These regulations describe the nationwide system of public employment service offices available to assist employers in finding available U.S. workers and how the fact-finding process is utilized by DOL as the basis of information for the certification determination. See also 20 CFR parts 651 through 658, and the Wagner-Peyser Act (29 U.S.C. Chapter 4B).

Part 656 also sets forth the responsibilities of employers who desire to employ immigrant aliens permanently in the United States. Such employers are required to demonstrate that they have attempted to recruit U.S. workers through advertising, through the Federal-State Employment Service System, and by other specified means. The purpose is to assure that there is an adequate test of the availability of U.S. workers to perform the work, and to ensure that aliens are not employed under conditions that would adversely affect the wages and working conditions of similarly employed U.S. workers.

## IV. Reduction in Recruitment Requests

On October 1, 1996, because of the increasing workloads, ETA issued General Administrative Letter No. 1–97, *Measures for Increasing Efficiency in the Permanent Labor Certification Process* (GAL 1–97). The GAL instituted a number of measures to increase efficiency which were achievable under current regulations. One of the measures to increase efficiency was to encourage employers to file requests for a reduction in recruitment (RIR) under § 656.21(i) of the permanent labor certification regulations. Requests for RIR processing are given expedited processing at ETA's regional offices. The RIR provision allows certifying officers to reduce partially or completely the employer's recruitment efforts through the SESA's, for example, by decreasing or eliminating the number of days which the job order and/or ad must be run. The notice requirement at § 656.20(g) can be reduced partially, but it cannot be eliminated, since it is based on a statutory requirement. See Immigration Act of 1990, Pub. L. 101–649, sec. 122 (b) (Nov. 29 1990).

The RIR provision may be utilized by certifying officers when the labor market has been adequately tested within 6 months prior to the filing of the application and there is no expectation that full or partial compliance with the prescribed recruitment measures will produce qualified and willing applicants.

The emphasis on the use of RIR has worked well and has contributed significantly to ETA being able to manage its increasing case load with limited staff resources. Backlogs in both the regional offices and SESA's would undoubtedly be substantially larger if the use of RIR had not been encouraged by GAL 1–97.

ETA has concluded that backlogs in SESA's could be substantially reduced if employers are allowed to have applications that were not originally filed as RIR cases and which meet the appropriate criteria removed from the SESA's processing queues and processed as RIR cases. Furthermore, reducing or eliminating the backlogs would facilitate the implementation of a new permanent employment certification system that ETA has been developing.

This regulatory change does not change any of the substantive requirements for getting an RIR application certified nor does it materially diminish any of the protections afforded U.S. workers. It merely permits employers to request that applications filed under the basic labor certification process be converted to RIR processing without losing their original filing date. As explained in the Proposed Rule, the filing date is important to employers because, according to INS regulations, ''[t]he priority date of any petition for classification under section 203(b) of the

Act which is accompanied by an individual labor certification from the Department of Labor shall be the date the request for certification was accepted for processing by any office within the employment service system.'' See 8 CFR 204.5(d). Currently, employers with cases in the queue which could qualify for RIR processing are reluctant to make such requests since, under current regulations, that would result in a loss of their original filing date which, in turn, would result in a loss of the alien's visa priority date. This is a serious disincentive for many employers where the alien beneficiary comes from a country where the visa numbers are backlogged. Therefore, the Department is taking this action to permit qualified applications to be converted to RIR processing with no loss of filing date.

## V. Analysis of Comments on the July 26, 2000 Proposed Rule

To obtain public input to assist in the development of final regulations, the Department published a proposed rule in the **Federal Register** on July 26, 2000, and invited public comment. In the development of this final rule the Department has carefully considered the comments received in response to the proposed rule.

The proposed rule elicited 12 comments, including one from the American Immigration Lawyers Association (AILA), one from the American Council on International Personnel, Inc. (ACIP), one from the Federation for American Immigration Reform (FAIR), one from a SESA, and eight from members of the general public. AILA and ACIP generally supported the Department's proposal and submitted comments that are primarily procedural in nature. FAIR opposes implementation of the proposal unless such implementation were to be coupled with what FAIR describes as adequate worker protections. The SESA supports the Department's efforts to reduce case backlogs in SESA processing queues but does not believe that the proposal will have any significant effect towards that end. Of the eight members of the general public submitting comments, two took a neutral position on the proposal but recommended further clarification concerning precisely when an application becomes ineligible for conversion, and the other six were generally supportive of the proposal but requested that it be broadened to allow an even larger number of applications to qualify. These comments are discussed in further detail below.

### *A. Timing of RIR Conversion Requests*

Eight commenters addressed issues concerning the timing of an employer's request for an RIR conversion and when an application becomes ineligible for such a conversion. Of these eight commenters, some simply requested clarification of the Department's position while several others recommended specific outcomes. The proposed rule stated that:

> [The] amendment to the RIR regulation at 20 CFR 656.21(i) would allow an employer to file a request to have an application filed on or before July 26, 2000, which has not been sent to the regional office, processed as a RIR request under § 656.21(i), provided that recruitment has not been conducted pursuant to §§ 656.21(f) and/or (g).

ACIP recommended that the rule should be modified to permit conversion at any time prior to the time that results of recruitment must be submitted to the SESA and provided specific regulatory text as part of its comments that it asserts would achieve that result. Several commenters questioned whether the RIR conversion procedures will be available to employers that initially filed RIR applications that were subsequently remanded back to the State agency for lack of adequate advertising in order to engage in the recruitment efforts required under the basic labor certification process. Others questioned whether applications that have been forwarded to the Regional office prior to recruitment to resolve issues such as a challenge to the SESA prevailing wage determination are eligible for RIR conversion. Two members of the general public requested clarification as to whether the proposed amendment's language limiting RIR conversion eligibility to those applications for which ''recruitment has not yet been conducted pursuant to paragraphs (f) and/or (g) of [§ 656.21]'' refers to both the paragraph in section (f) concerning SESA requests for employers to make corrections to applications prior to the commencement of recruitment activities, and the paragraph in section (g) concerning print advertisements. One member of the general public suggested that applications should be eligible for RIR conversion provided that they are submitted with adequate evidence of advertising prior to any ''significant correspondence'' having been sent by the SESA to the employer. Another requested that, at the very least, the regulation should say that RIR conversion is only permitted where recruitment has not yet been requested by the SESA, so that a failure to place a timely advertisement would not be rewarded for some cases with permission to process the case as an RIR and considered grounds for inactivating other cases because the employer didn't ask for an RIR conversion. Lastly, two other members of the general public stated their belief that RIR conversions should be permitted even if recruitment under the basic process has been completed.

The Department has carefully considered the various options suggested by commenters and has determined that the best result would be to adopt a bright-line test for a cutoff date for RIR eligibility. The Department believes that the use of such a standard will clear up the confusion that has been expressed by commenters. Towards that end, this Final Rule provides that an employer may request an RIR conversion up until the point that the SESA has placed the job order pursuant to § 656.21(f)(1). The date of the job order's placement shall be determinative in evaluating whether an RIR conversion request may be granted by the certifying officer.

As noted in the Proposed Rule, since the RIR procedures were designed to expedite processing by permitting employers to substitute recruiting conducted prior to filing the application for the recruiting required by § 656.21, it would be incongruous to entertain an RIR request from an employer who had already commenced the mandated recruiting. The Department simply cannot ignore any potential availability of U.S. applicants and believes such applications should be approved or denied based upon those recruitment efforts.

In response to commenters who questioned whether RIR is still permitted where corrections are needed, the Department believes that applications may still be converted to RIR processing if changes are needed and the SESA so notifies the employer. Consistent with GAL 1–97, the SESA should resolve any items that need to be corrected prior to transmitting the application to the certifying officer. GAL 1–97 further provides that where there are deficiencies that would have affected the recruitment, the SESA should advise the employer that it is unlikely that the certifying officer will approve the RIR and suggest that the employer continue to pursue its application under the basic labor certification process. However, the SESA should not use the fact that corrections are necessary as a means to thwart an employer's legitimate efforts to convert an application to the RIR process.

Questions were also raised with respect to applications that have been forwarded to the regional office prior to recruitment and whether they may also be eligible for RIR conversion. As far as the Department can determine there is a relatively small number of cases that are now in regional office queues for which no recruiting has yet to occur. If the certifying officer remands such applications back to State agencies for further processing, the final rule permits RIR conversion requests provided that the application was initially filed prior to August 3, 2001. The Department, however, rejects AILA's suggestion that the regulation be revised to allow RIR to be requested in these cases by filing conversion requests directly with the regional certifying officer. Section 656.21(i)(1) provides that the employer shall file its written request for RIR processing at the appropriate Job Service office. The Proposed Rule did not contemplate changing the basic structure of the RIR processing procedures which require that the employer request for RIR processing be submitted to the SESA having jurisdiction over the area of intended employment. We believe that orderly processing dictates that all such requests be filed with the SESA, whether the request is submitted with the application initially, or when submitted to the SESA under the RIR conversion procedures set forth in this final rule. Lastly, the Department does not believe that there are a large enough number of pre-recruitment cases in regional office queues for the amendment to have much of a beneficial effect on State agency backlogs. There appears to be such a small number of applications that could conceivably benefit from the suggested amendment that the Department does not believe such changes to the regulations governing RIR processing are warranted.

A member of the general public asserted that once the RIR conversion procedures have been implemented there will be employers requesting State agencies to hold up advertising on an application until the employer has had adequate time to conduct the recruitment activities and/or to gather evidence that will support a future RIR conversion request. We are mindful of this possibility. We are also concerned about the administrative complexities of keeping track of such cases. On the other hand, it is our objective to use RIR processing to the maximum extent possible. Therefore, the Department intends to explore this issue with the regional certifying officers and SESA's responsible for administering the labor certification program.

*B. RIR Conversion Procedures*

Eight commenters stressed a need for very clear guidelines that will specify the procedures to be followed with respect to RIR conversion requests by employers, SESA's, and regional offices. AILA suggested two potential procedures; one for situations in which amendments to the application are necessary, and one for applications for which no amendments are required. ACIP suggested similar procedures that differ only to the extent that they presuppose the need for a new part A of Form ETA 750. FAIR offered its view that employers who convert applications to RIR status should not be allowed to make any changes in the job duties or requirements and suggested that to do so would present yet another opportunity to ''game the system.'' Four members of the general public requested that the Department process converted RIR applications expeditiously since the priority dates of such cases are much older than RIR applications currently being processed.

The Department agrees with the majority of commenters that ETA must offer clear guidelines to SESA's and regional offices on how RIR conversion requests are to be processed. The Department does not, however, accept ACIP's blanket assumption that a new part A of Form ETA 750 will be required in all situations where applications are converted to RIR processing as a result of this regulatory change. We also reject FAIR's suggestion that no amendments to such applications be permitted. Many of these applications, especially those in high-volume SESA's, have been in the queue for extended periods of time. Therefore, it is to be expected that there may be a need to make changes to the job opportunity and/or increase the rate of pay offered due to an increased prevailing wage rate applicable to the occupation and area or, in many cases, an increase in the employer's own pay scale. With respect to changes in the content of labor certification applications, the Department did not intend in offering the proposed amendment to change the long standing procedures for handling such requests. If the duties and requirements of the job offer are changed to such an extent that it becomes a new job opportunity, the application would need to be refiled with the State agency as a new application. However, minor changes such as an increased wage offer or slightly different job duties are permitted as long as it remains essentially the same job opportunity.

While the Department agrees with the general thrust of AILA's suggestions regarding the procedures to be followed, we do not believe it is prudent to put such explicit guidance in the regulations. Rather, this preamble will serve to clarify the Department's intent. When a written request for conversion is received by the SESA, the request letter and supporting documentation will be added to the case file and the application will be removed from the regular labor certification application queue and placed in the RIR queue. If operating experience indicates that further guidance is needed ETA will issue to the SESA's and regional offices a policy directive outlining in further detail the procedures to be followed in adjudicating such requests.

In dealing with applications that do not require amendments, ETA envisions that the procedures will operate consistent with the preamble to the proposed rule which stated:

> The proposed regulation also provides that for the request to have a previously filed application processed as an RIR request it must be accompanied by documentary evidence of good faith recruitment conducted within the 6 months immediately preceding the date of the request.

With respect to applications for which amendments are required, such as an increase in the rate of pay offered or a change of address, ETA has concluded that amendments can be handled in the same fashion as they are currently handled by employers making the amendments directly on the form and initialing the changes. To the extent employers currently make their amendments by letter or by submitting a new application form, those procedures will continue to be followed.

In response to comments suggesting that converted RIR applications be processed expeditiously since the priority dates are older than RIR applications currently being processed, GAL 1–97 provides that RIR applications are to be given expedited processing unless they contain deficiencies. However, converted RIR applications will not be processed any differently than applications that were initially filed under the RIR provisions of the regulations. Such applications will continue to be processed by regional offices along with other RIR requests in the order in which they are received.

Finally, ACIP recommended that the final rule include a requirement that the agency notify the petitioner within a reasonable period of time after filing for conversion on whether the labor certification application has, in fact, been converted to RIR processing. The

Department does not believe it is appropriate that any special rules be implemented regarding notification with respect to RIR conversion determinations. Furthermore, generally all requests for conversion to RIR processing will be granted. Only where the occupation listed in the application is on *Schedule B*, or the request is not timely, would the employer request for conversion to RIR processing be denied. The Department agrees that notification of action on a particular application should be provided in the normal course of business but we reject the suggestion to place a time limit in the regulation. Processing cases under the RIR procedures is virtually always accomplished in considerably less time than processing cases under the non-RIR basic process.

*C. Initial Filing Date Eligibility*

AILA suggested that the cutoff date for RIR conversion eligibility should be revised to occur on the date a final or interim final rule is published. In the Proposed Rule, the Department stated that the proposed regulation would allow employers to request that a permanent labor certification application be processed as an RIR request only if the initial application was filed on or before July 26, 2000, the date of publication. As stated in the proposed rule, ETA's operating experience indicates that without such a limitation, employers may be motivated to file large numbers of cases, many of which may be inadequately prepared, simply to obtain a filing date and then convert such cases to RIR processing. This outcome would undermine the primary purposes of the proposed regulatory revision to reduce backlogs of existing cases in State agency processing queues and to facilitate the orderly transition to a new streamlined labor certification system.

In its comments, AILA said that, while it understood the Department's desire to avoid an onslaught of filings in anticipation of the regulation, it felt that the problem could as readily be avoided by using the publication date of the final or interim final regulation. AILA further asserted that the later date would provide no lead time to file applications under old procedures to take advantage of new procedures, but would enable the Department to consider as many cases as possible in this new, efficiency-improving, procedure.

The Department agrees with AILA's comments. While we continue to believe that the regulation must contain some time limitation with respect to which applications are eligible for conversion to RIR processing, we agree that adopting the date of publication of this final rule as the cutoff date, as opposed to the date the proposed rule was published, will better serve the interests of the regulated community by expanding the pool of eligible applications without materially diminishing significant protections afforded U.S. workers. Moreover, as noted by AILA, adopting as the cutoff the date of publication of this final rule will just as readily prevent the filing of large numbers of inadequately prepared applications. Accordingly, this final rule provides that the option to request that a permanent labor certification application be converted to RIR processing applies only to applications that were initially filed on or before August 3, 2001.

*D. Justification for Regulatory Change*

One commenter, FAIR, strongly asserted that the Department did not have the authority to rely on ''efficiency in processing'' as a permissible basis to impose what it calls ''sweeping changes to the permanent alien labor certification program implicit in the proposed regulation.'' FAIR states that the changes conflict with the plain meaning of 8 U.S.C. 1182(a)(5)(A), the statutory provisions that form the basis for the permanent labor certification program. Further, FAIR avers that past cutbacks in federal funding for administration of the alien labor certification program are not a rational basis for the proposed regulation and that pending labor certification applications are already at acceptable levels and continue to decline. FAIR also contended that reports of an increased incidence of suspect applications support a limitation of RIR and RIR conversion to routine, fully-compliant, applications, and that applications filed under the provisions of § 245(i) [1] of the INA are inherently suspect and should not benefit from relaxed scrutiny under RIR processing. FAIR generally opposes the conversion of alien labor certification applications to RIR status unless adequate worker protections are included. Toward that end, FAIR suggests that, should the Department decide that the RIR conversion proposal must go forward despite its opposition, it should include seven specific U.S. worker protections that it recommended in its comments on the proposed amendment.

The Department views the majority of FAIR's comments and suggestions as general objections to the operation of the RIR provisions contained in the regulations governing the permanent labor certification program. Neither the proposed rule nor this final rule are or were designed to alter the general procedures applicable to the adjudication of RIR applications. At this time, the Department is not entertaining comments that apply to RIR processing generally as such comments are not within the scope of this rulemaking.

The Department also does not believe the proposed amendment in any way conflicts with the statutory provisions governing the permanent labor certification program. The RIR provisions have been in the Department's regulations in one form or another since 1977, and in their present form since 1981. The proposed amendment is simply a housekeeping rule to permit otherwise eligible applications to be processed as RIR applications even though they do not meet the current procedural requirement that the recruitment must have been conducted prior to filing the application. Every application for which RIR conversion will occur as a result of this rule could always have been withdrawn by the employer and re-filed as an RIR application. This rule merely permits such employers to convert their cases to RIR processing without the need to withdraw the existing application filed under the basic process. In so doing, the proposed amendment would permit an employer to convert to RIR processing while at the same time allowing them to retain their original filing date. After converting an application to RIR processing as a result of this final rule, the employer will still have to meet all of the long-standing regulatory criteria applicable to RIR requests and ETA policy directives issued thereunder, such as GAL 1–97.

With respect to FAIR's comments that pending alien labor certification applications are already at acceptable levels and continue to decline, the Department simply cannot agree. The number of labor certification applications in State agency processing queues still remains unacceptably high and the time it takes to process them remains unacceptably long. Any backlog of applications, regardless of the level, stands to hinder the smooth transition

[1] Section 245(i) of the Immigration and Nationality Act allowed individuals who entered the United States legally, and otherwise qualified for permanent resident status, to complete processing for their green cards in the United States, whether or not they violated their status or overstayed a temporary visa, by paying a fee of $1,000. After months of debate over whether to extend or terminate Section 245(i), Congress compromised on a provision that allowed individuals to apply for permanent residence within the United States under the section so long as an application for an alien labor certification was filed on the individual's behalf by January 14, 1998. This provision was recently reenacted to extend through April 30, 2001.

to the new, more streamlined, permanent labor certification program. Further, as we work to transition to the new system, SESA's simply must clear up their existing backlog of applications in their entirety for, under the new system, SESA's will no longer be funded for processing such applications.

FAIR also contends that applications initially filed under Section 245(i) of the INA are inherently suspect and should not benefit from relaxed scrutiny under the RIR provisions of the regulations. The Department believes that no specific application, nor any specific occupation, is inherently deserving of favorable treatment on requests to grant an RIR. Similarly, no application or occupation is inherently ineligible, with the exception of those occupations listed on *Schedule B*, which are specifically precluded from consideration under RIR processing procedures by § 656.21(i) of the regulations governing the permanent labor certification program. Moreover, there simply is no readily identifiable means to determine those applications that have been filed on behalf of beneficiaries who will seek at some future date to exercise their grand-fathered benefits under section 245(i) of the INA. Just because an application may have been filed on or before January 14, 1998, the original cutoff date for eligibility under section 245(i), is by no means determinative in evaluating whether a particular alien beneficiary actually intends to exercise their rights under that section. Further, GAL 1–97 makes clear that to be eligible for RIR processing, the application cannot contain deficiencies such as unduly restrictive job requirements.

One additional comment concerning the general justification for the regulatory change was submitted by the SESA, in which they observed that reducing the backlog is not simply a matter of allowing RIR processing. They are of the belief that many of the applications in the queue require additional handling to resolve issues prior to beginning recruitment or being forwarded to the regional office for certification. The Department is aware that this regulatory change is not a panacea and that some level of backlogged applications will continue to exist. The Department agrees that a number of applications in State agency processing queues contain deficiencies and are thus inappropriate for an RIR conversion.

*E. Other Issues*

Some commenters addressed other issues that arise under the permanent labor certification program in general without any direct bearing on the proposed amendment, and as such, fall outside the scope of this rulemaking. ACIP firmly stated that the final promulgation of this regulation should in no way disrupt or delay processing of traditionally filed labor certification applications that are not converted to RIR processing. The SESA recommended that to reduce ongoing and future backlogs and speed up the application process, the Department should propose an amendment to the list of *Schedule A* occupations to include others for which there exists a short supply of U.S. workers. Specifically, they suggested that electrical and electronic engineers, software engineers, computer programmers, systems analysts, and foreign specialty cooks, be added to the *Schedule A* list of occupations.

In response to ACIP's concerns regarding the impact of the proposed amendment on processing times for labor certification applications filed under the basic process, administrative decisions as to how resources are allocated are outside the scope of this rulemaking. However, ETA anticipates that State agencies and regional offices will continue to process both RIR and non-RIR cases simultaneously. Backlogs have been declining for both classes of cases. The SESA's suggestion to put additional occupations on the *Schedule A* list is also outside the scope of this rulemaking. As noted above, the proposed amendment is simply a housekeeping rule to permit otherwise eligible applications to be processed as RIR applications even though they do not meet the current procedural requirement that the recruitment must have been conducted prior to filing the application.

**Executive Order 12866**

The Department has determined that this Final Rule is not an ''economically significant regulatory action'' within the meaning of Executive Order 12866, in that it will not have an economic effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities.

While it is not economically significant, the Office of Management and Budget reviewed the final rule because of the novel legal and policy issues raised by this rulemaking.

**Regulatory Flexibility Act**

This final rule only affects those employers seeking immigrant workers for permanent employment in the United States. The Department of Labor has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the rule will not have a significant economic impact on a substantial number of small entities.

**Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**Small Business Regulatory Enforcement Fairness Act of 1996**

This final rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

**Executive Order 13132**

This final rule will not have a 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. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a summary impact statement.

**Assessment of Federal Regulations and Policies on Families**

This final rule does not affect family well-being.

**Paperwork Reduction Act**

The rule does not modify the existing collection of information requirements in 20 CFR 656.21.

**Catalogue of Federal Domestic Assistance Number**

This program is listed in the *Catalogue of Federal Domestic Assistance* at Number

17.203, ''Certification for Immigrant Workers.''

### List of Subjects in 20 CFR 656

Administrative practice and procedure, Aliens, Crewmembers, Employment, Employment and training, Enforcement, Fraud, Guam, Immigration, Labor, Longshore work, Unemployment, Wages and working conditions.

### Final Rule

Accordingly, part 656 of chapter V of title 20 of the Code of Federal Regulations is amended as follows:

## PART 656—[AMENDED]

1. The authority citations for Part 656 is revised to read as follows:

**Authority:** 8 U.S.C. 1182(a)(5)(A) and 1182(p); 29 U.S.C. 49 *et seq.*; sec.122, Pub. L. 101–649, 109 Stat. 4978.

**§ 656.21 [Amended]**

2. Section 656.21 is amended by adding a new paragraph (i)(6), to read as follows:

**§ 656.21 Basic labor certification process.**

* * * * *

(i) * * *

(6) Notwithstanding the provisions of paragraph (i)(1)(i) of this section, an employer may file a request with the SESA to have any application filed on or before August 3, 2001, processed as a reduction in recruitment request under this paragraph (i), provided that recruitment efforts have not been commenced pursuant to paragraph 656.21(f)(1) of this section.

* * * * *

Signed at Washington, DC, this 30th day of July, 2001.

**Raymond J. Uhalde,**

*Deputy Assistant Secretary.*

[FR Doc. 01–19465 Filed 8–2–01; 8:45 am]

BILLING CODE 4510–30–P

---

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[TD 8960]**

**RIN 1545–BA01**

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

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

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations relating to recognition of gain on certain distributions of stock or securities of a controlled corporation in connection with an acquisition. Changes to the applicable law were made by the Taxpayer Relief Act of 1997. These temporary regulations affect corporations and are necessary to provide them with guidance needed to comply with these changes.

**EFFECTIVE DATES:** These temporary regulations are effective August 3, 2001.

**FOR FURTHER INFORMATION CONTACT:** Megan R. Fitzsimmons of the Office of Associate Chief Counsel (Corporate), (202) 622–7790 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

On January 2, 2001, the IRS and Treasury published in the **Federal Register** (REG–107566–00, 66 FR 66; (2001–3 I.R.B. 346)) a notice of proposed rulemaking (the Proposed Regulations) under section 355(e) of the Internal Revenue Code of 1986. Section 355(e) provides that the stock of a controlled corporation will not be qualified property under section 355(c)(2) or 361(c)(2) if the stock is distributed as ''part of a plan (or series of related transactions) pursuant to which 1 or more persons acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or any controlled corporation.''

The Proposed Regulations provide guidance concerning the interpretation of the phrase ''plan (or series of related transactions).'' The Proposed Regulations generally provide that whether a distribution and an acquisition are part of a plan is determined based on all the facts and circumstances. They also set forth six safe harbors, the satisfaction of which would confirm that a distribution and an acquisition are not part of a plan.

A public hearing regarding the Proposed Regulations was held on May 15, 2001. In addition, written comments were received. A number of commentators have indicated that the lack of guidance under section 355(e) is hindering the ability to undertake acquisitions and divestitures. These commentators have requested that the IRS and Treasury provide immediate guidance pending the finalization of those regulations. In response to these requests, the IRS and Treasury are promulgating the Proposed Regulations as temporary regulations in this Treasury Decision. The temporary regulations are identical to the Proposed Regulations, except that the temporary regulations reserve section 1.355–7(e)(6) (suspending the running of any time period prescribed in the Proposed Regulations during which there is a substantial diminution of risk of loss under the principles of section 355(d)(6)(B)) and Example 7 of the Proposed Regulations (interpreting the term ''similar acquisition'' in the context of a situation involving multiple acquisitions).

The IRS and Treasury continue to study all of the comments received regarding the Proposed Regulations. The IRS and Treasury will continue to devote significant resources to analyzing the comments and, in the near future, expect to issue additional guidance regarding the interpretation of the phrase ''plan (or series of related transactions).''

### Special Analyses

It has been determined that these temporary regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these temporary regulations, and, because the temporary regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Drafting Information

The principal author of these temporary regulations is Brendan P. O'Hara, Office of the Associate Chief Counsel (Corporate). However, other personnel from the Department of the Treasury and the IRS participated in their development.

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

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

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

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

**§ 1.355–0 Outline of sections.**

In order to facilitate the use of §§ 1.355–1 through 1.355–7T, this section lists the major paragraphs in those sections as follows:

* * * * *

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

(a) In general.
(b) Plan.
(c) Multiple acquisitions.
(d) Facts and circumstances.
(e) Operating rules.
(1) Reasonable certainty evidence of business purpose to facilitate an acquisition.
(2) Internal discussion evidence of business purpose.
(3) Hostile takeover defense.
(4) Effect of distribution on trading in stock.
(5) Consequences of section 355(e) disregarded for certain purposes.
(6) Substantial diminution of risk. [Reserved]
(f) Safe harbors.
(1) Safe Harbor I.
(2) Safe Harbor II.
(3) Safe Harbor III.
(4) Safe Harbor IV.
(5) Safe Harbor V.
(i) In general.
(ii) Special rules.
(6) Safe Harbor VI.
(g) Stock acquired by exercise of options, warrants, convertible obligations, and other similar interests.
(1) Treatment of options.
(i) General rule.
(ii) Agreement, understanding, arrangement, or substantial negotiations to write an option.
(2) Instruments treated as options.
(3) Instruments generally not treated as options.
(i) Escrow, pledge, or other security agreements.
(ii) Compensatory options.
(iii) Options exercisable only upon death, disability, mental incompetency, or separation from service.
(iv) Rights of first refusal.
(v) Other enumerated instruments.
(h) Multiple controlled corporations.
(i) [Reserved]
(j) Valuation.
(k) Definitions.
(1) Agreement, understanding, arrangement, or substantial negotiations.
(2) Controlled corporation.
(3) Controlling shareholder.
(4) Established market.
(5) Five-percent shareholder.
(l) [Reserved]
(m) Examples.
(n) Effective date.

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

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

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

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

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

(b) *Plan.* (1) Whether a distribution and an acquisition are part of a plan is determined based on all the facts and circumstances. In general, in the case of an acquisition after a distribution, the distribution and the acquisition are considered part of a plan if Distributing, Controlled, or any of their respective controlling shareholders intended, on the date of the distribution, that the acquisition or a similar acquisition occur in connection with the distribution. In general, in the case of an acquisition before a distribution, the acquisition and the distribution are considered part of a plan if Distributing, Controlled, or any of their respective controlling shareholders intended, on the date of the acquisition, that a distribution occur in connection with the acquisition.

(2) For purposes of paragraph (b)(1) of this section, the actual acquisition and the intended acquisition may be similar even though the identity of the person acquiring stock of Distributing or Controlled (acquirer), the timing of the acquisition or the terms of the actual acquisition are different from the intended acquisition. For example, in the case of a public offering or auction, the actual acquisition and the intended acquisition may be similar even though there are changes in the terms of the stock, the class of stock being offered, the size of the offering, the timing of the offering, the price of the stock, or the participants in the public offering or auction.

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

(d) *Facts and circumstances.* (1) The facts and circumstances to be considered in demonstrating whether a distribution and an acquisition are part of a plan include, but are not limited to, the facts and circumstances specified in paragraphs (d)(2) and (3) of this section. The weight to be given each of the facts and circumstances depends on the particular case. Therefore, whether a distribution and an acquisition are part of a plan does not depend on the relative number of facts and circumstances present under paragraph (d)(2) of this section as compared to paragraph (d)(3) of this section.

(2) Among the facts and circumstances tending to show that a distribution and an acquisition are part of a plan are the following:

(i) In the case of an acquisition (other than involving a public offering or auction) after a distribution, Distributing or Controlled and the acquirer (or any of their respective controlling shareholders) discussed the acquisition or a similar acquisition by the acquirer before the distribution. The weight to be accorded the discussions depends on the nature, extent and timing of the discussions. The existence of an agreement, understanding, arrangement or substantial negotiations at the time of the distribution is given substantial weight.

(ii) In the case of an acquisition (other than involving a public offering or auction) after a distribution, Distributing or Controlled and a potential acquirer (or any of their respective controlling shareholders) discussed an acquisition before the distribution and a similar acquisition by a different person occurred after the distribution. The weight to be accorded the discussions depends on the nature, extent and timing of the discussions and the similarity of the acquisition actually occurring to the acquisition discussed before the distribution.

(iii) In the case of an acquisition involving a public offering or auction after a distribution, Distributing or Controlled (or any of their respective controlling shareholders) discussed the acquisition with an investment banker or other outside adviser before the distribution. The weight to be accorded the discussions depends on the nature, extent and timing of the discussions.

(iv) In the case of an acquisition before a distribution, Distributing or Controlled and the acquirer (or any of their respective controlling shareholders) discussed a distribution before the acquisition. The weight to be accorded the discussions depends on

the nature, extent and timing of the discussions.

(v) In the case of an acquisition before a distribution, Distributing or Controlled and a potential acquirer (or any of their respective controlling shareholders) discussed a distribution before the acquisition and a similar acquisition by a different person occurred before the distribution. The weight to be accorded the discussions depends on the nature, extent and timing of the discussions and the similarity of the acquisition actually occurring to the potential acquisition that was discussed.

(vi) In the case of an acquisition involving a public offering or auction before a distribution, Distributing or Controlled (or any of their respective controlling shareholders) discussed a distribution with an investment banker or other outside adviser before the acquisition. The weight to be accorded the discussions depends on the nature, extent and timing of the discussions.

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

(viii) In the case of an acquisition either before or after a distribution, the acquisition and the distribution occurred within 6 months of each other or there was an agreement, understanding, arrangement, or substantial negotiations regarding the second transaction within 6 months after the first transaction. Also, in the case of an acquisition occurring after a distribution, there was an agreement, understanding, arrangement, or substantial negotiations regarding a similar acquisition at the time of the distribution or within 6 months thereafter.

(ix) In the case of an acquisition either before or after a distribution, the debt allocation between Distributing and Controlled made an acquisition of Distributing or Controlled likely in order to service the debt.

(3) Among the facts and circumstances tending to show that a distribution and an acquisition are not part of a plan are the following:

(i) In the case of an acquisition (other than involving a public offering or auction) after a distribution, neither Distributing nor Controlled and the acquirer or any potential acquirer (nor any of their respective controlling shareholders) discussed the acquisition or a similar acquisition before the distribution.

(ii) In the case of an acquisition involving a public offering or auction after a distribution, neither Distributing nor Controlled (nor any of their respective controlling shareholders) discussed the acquisition with an investment banker or other outside adviser before the distribution.

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

(iv) In the case of an acquisition (other than involving a public offering or auction) before a distribution, neither Distributing nor Controlled and the acquirer (nor any of their respective controlling shareholders) discussed a distribution before the acquisition. This paragraph (d)(3)(iv) does not apply if the acquisition occurred after the date of the public announcement of the planned distribution.

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

(vi) In the case of an acquisition either before or after a distribution, the distribution was motivated in whole or substantial part by a corporate business purpose (within the meaning of § 1.355–2(b)) other than a business purpose to facilitate the acquisition or a similar acquisition of Distributing or Controlled. The presence of a business purpose to facilitate the acquisition or a similar acquisition of Distributing or Controlled is relevant in determining the extent to which the distribution was motivated by a corporate business purpose (within the meaning of § 1.355–2(b)) other than a business purpose to facilitate the acquisition or a similar acquisition of Distributing or Controlled.

(vii) In the case of an acquisition either before or after a distribution, the distribution would have occurred at approximately the same time and in similar form regardless of the acquisition or a similar acquisition (including a previously proposed similar acquisition that did not occur).

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

(1) *Reasonable certainty evidence of business purpose to facilitate an acquisition.* (i) In the case of an acquisition after a distribution, if, at the time of the distribution, it was reasonably certain that before a date that is 6 months after the distribution an acquisition would occur, an agreement, understanding, or arrangement would exist, or substantial negotiations would occur regarding an acquisition of Distributing or Controlled, the reasonable certainty is evidence of a business purpose to facilitate an acquisition of Distributing or Controlled.

(ii) In the case of an acquisition before a distribution, if the acquisition occurred after the date of the public announcement of the planned distribution, or if, at the time of the acquisition, it was reasonably certain that before a date that is 6 months after the acquisition the distribution would occur, an agreement, understanding, or arrangement would exist, or substantial negotiations would occur regarding the distribution, the public announcement or reasonable certainty is evidence of a business purpose to facilitate an acquisition of Distributing or Controlled.

(2) *Internal discussions evidence of business purpose.* The fact that internal discussions regarding an acquisition occurred may be indicative of the business purpose that motivated the distribution.

(3) *Hostile takeover defense.* If Distributing distributes Controlled stock intending, in whole or substantial part, to decrease the likelihood of the acquisition of Distributing or Controlled by separating it from another corporation that is likely to be acquired, Distributing will be treated as having a business purpose to facilitate the acquisition of the corporation that was likely to be acquired.

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

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

(6) *Substantial diminution of risk.* [Reserved]

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

(A) The acquisition occurred more than 6 months after the distribution and

there was no agreement, understanding, arrangement, or substantial negotiations concerning the acquisition before a date that is 6 months after the distribution; and

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

(ii) For purposes of paragraph (f)(1)(i)(B) of this section, the presence of a business purpose to facilitate an acquisition of Distributing or Controlled is relevant in determining the extent to which the distribution was motivated by a corporate business purpose (within the meaning of § 1.355–2(b)) other than a business purpose to facilitate an acquisition of Distributing or Controlled.

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

(i) The acquisition occurred more than 6 months after the distribution and there was no agreement, understanding, arrangement, or substantial negotiations concerning the acquisition before a date that is 6 months after the distribution; and

(ii) The distribution was motivated in whole or substantial part by a corporate business purpose (within the meaning of § 1.355–2(b)) to facilitate an acquisition or acquisitions of no more than 33 percent of the stock of Distributing or Controlled, and no more than 20 percent of the stock of the corporation (whose stock was acquired in the acquisition or acquisitions that motivated the distribution) was either acquired or the subject of an agreement, understanding, arrangement, or substantial negotiations before a date that is 6 months after the distribution.

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

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

(5) *Safe Harbor V*—(i) *In general.* An acquisition of Distributing or Controlled stock that is listed on an established market is not part of a plan if the acquisition is pursuant to a transfer between shareholders of Distributing or Controlled, neither of whom is a 5-percent shareholder. For purposes of the preceding sentence, the term 5-percent shareholder is defined in paragraph (k)(5) of this section, except that the corporation can rely on Schedules 13D and 13G (or any similar schedules) filed with the Securities and Exchange Commission to identify its 5-percent shareholders.

(ii) *Special rules.* (A) This paragraph (f)(5) does not apply to public offerings or redemptions.

(B) This paragraph (f)(5) does not apply to a transfer of stock by or to a person who, pursuant to a formal or informal understanding with other persons (the coordinating group), has joined in coordinated transfers of stock if, at any time during the period the understanding exists, the coordinating group owns, in the aggregate, 5 percent or more of the stock of the corporation whose stock is transferred (determined by vote or value) immediately before or after each transfer or at the time of the distribution. A principal element in determining if such an understanding exists is whether the investment decision of each person is based on the investment decision of 1 or more other existing or prospective shareholders.

(C) This paragraph (f)(5) does not apply to a transfer of stock by or to a person if the corporation the stock of which is being transferred knows, or has reason to know, that the person (or a coordinating group, treating it as a single person) intends to become a 5-percent shareholder at any time during the 4-year period beginning 2 years before the distribution.

(6) *Safe Harbor VI.* If stock of Distributing or Controlled is acquired by an employee or director of Distributing, Controlled, or a person related to Distributing or Controlled under section 355(d)(7)(A), in connection with the performance of services as an employee or director for the corporation or a person related to it under section 355(d)(7)(A) (and that is not excessive by reference to the services performed) in a transaction to which section 83 applies, the acquisition is not an acquisition that is part of a plan as described in paragraph (b)(1) of this section.

(g) *Stock acquired by exercise of options, warrants, convertible obligations, and other similar interests*—(1) *Treatment of options*—(i) *General rule.* For purposes of this section, if stock of Distributing or Controlled is acquired pursuant to an option, the option will be treated as an agreement to acquire the stock on the date the option is written unless Distributing establishes that on the later of the date of the stock distribution or the writing of the option, the option was not more likely than not to be exercised. The determination of whether an option was more likely than not to be exercised is based on all the facts and circumstances, taking control premiums and minority and blockage discounts into account in determining the fair market value of stock underlying an option.

(ii) *Agreement, understanding, arrangement, or substantial negotiations to write an option.* If there is an agreement, understanding, or arrangement to write an option, the option will be treated as written on the date of the agreement, understanding, or arrangement. If an agreement, understanding, or arrangement to write an option is reached, or an option is written, more than 6 months but not more than 2 years after the distribution, and there were substantial negotiations regarding the writing of the option or the acquisition of the stock underlying the option before the end of the 6-month period beginning on the date of the distribution, the option will be treated as written within 6 months after the distribution.

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

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

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

(ii) *Compensatory options.* An option to acquire stock in Distributing or Controlled with customary terms and conditions provided to an employee or director of Distributing, Controlled, or a person related to Distributing or Controlled under section 355(d)(7)(A), in connection with the performance of services as an employee or director for the corporation or a person related to it under section 355(d)(7)(A) (and that is not excessive by reference to the services performed) and that immediately after the distribution and within 6 months thereafter—

(A) Is nontransferable within the meaning of § 1.83–3(d); and

(B) Does not have a readily ascertainable fair market value as defined in § 1.83–7(b).

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

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

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

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

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

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

(i) [Reserved]

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

(k) *Definitions*—(1) *Agreement, understanding, arrangement, or substantial negotiations.* Whether an agreement, understanding, or arrangement exists depends on the facts and circumstances. The parties do not necessarily have to have entered into a binding contract or have reached agreement on all terms to have an agreement, understanding, or arrangement. However, an agreement, understanding, or arrangement clearly exists if enforceable rights to acquire stock exist. In public offerings or auctions by Distributing or Controlled of Distributing or Controlled's stock, an agreement, understanding, arrangement, or substantial negotiations can exist even if the acquirer has not been specifically identified. The existence of such an agreement, understanding, arrangement, or substantial negotiations will be based on discussions with an investment banker or other outside adviser.

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

(3) *Controlling shareholder.* (i) A controlling shareholder of a corporation the stock of which is not listed on an established market is any person who, directly or indirectly, or together with related persons (as described in sections 267(b) and 707(b)), possesses voting power in Distributing or Controlled representing a meaningful voice in the governance of the corporation.

(ii) A controlling shareholder of a corporation the stock of which is listed on an established market is a 5-percent shareholder who actively participates in the management or operation of the corporation.

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

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

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

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

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

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

(5) *Five-percent shareholder.* A person will be considered a 5-percent shareholder of a corporation the stock of which is listed on an established market if the person owns, directly or indirectly, or together with related persons (as described in sections 267(b) and 707(b)) 5 percent or more of any class of stock of the corporation whose stock is transferred. A person is a 5-percent shareholder if the person meets the requirements of the preceding sentence immediately before or after each transfer. All options are treated as exercised for the purpose of determining whether the shareholder is a 5-percent shareholder.

(l) [Reserved]

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

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

(ii) No Safe Harbor applies to this acquisition.

(iii) The issue is whether the distribution of C and the merger of D into X are part of a plan. To determine whether the distribution of C and the merger of D into X are part of a plan, D must consider all the facts and circumstances, including those described in paragraph (d) of this section.

(iv) The following tends to show that the distribution of C and the merger of D into X are part of a plan: X and D discussed the acquisition before the distribution (paragraph (d)(2)(i) of this section), D was motivated by a business purpose to facilitate the merger (paragraph (d)(2)(vii) of this section), and the distribution and the merger occurred within 6 months of each other (paragraph (d)(2)(viii) of this section). Because the merger was not only discussed, but was agreed to, before the distribution, the fact described in paragraph (d)(2)(i) of this section is given substantial weight.

(v) None of the facts and circumstances listed in paragraph (d)(3) of this section, tending to show that a distribution and an acquisition are not part of a plan, exist in this case.

(vi) The distribution of C and the merger of D into X are part of a plan under paragraph (b)(1) of this section.

*Example 2. Substituted acquirer.* (i) The facts are the same as in *Example 1,* except that after D distributes C, X is unable to fulfill one of the conditions of the merger agreement and the merger of D into X does not occur. Y, one of X's competitors, perceives this as an opportunity and begins discussing with D a merger into Y. Five months after D distributes C, D merges into Y. As a result of the merger, the D shareholders own less than 50 percent of the outstanding Y stock.

(ii) No Safe Harbor applies to this acquisition.

(iii) The issue is whether the distribution of C and the merger of D into Y are part of a plan. To determine whether the distribution of C and the merger of D into Y are part of a plan, D must consider all the facts and circumstances, including those described in paragraph (d) of this section.

(iv) The following tends to show that the distribution of C and the merger of D into Y are part of a plan: X, a potential acquirer, and D discussed an acquisition before the distribution and a similar acquisition by Y occurred (paragraph (d)(2)(ii) of this section), D was motivated by a business purpose to facilitate an acquisition similar to the merger with Y (paragraph (d)(2)(vii) of this section), and the distribution and the merger occurred within 6 months of each other (paragraph (d)(2)(viii) of this section).

(v) As in *Example 1*, none of the facts and circumstances listed in paragraph (d)(3) of this section exist in this case. Although a substituted acquirer acquired D, the merger of D into Y was similar to the negotiated merger of D into X.

(vi) The distribution of C and the merger of D into Y are part of a plan under paragraph (b)(1) of this section.

*Example 3. Public offering.* (i) D's managers, directors, and investment banker discuss the possibility of offering D stock to the public. They decide a public offering of 50 percent of D's stock with D as a stand alone corporation would be in D's best interest. To facilitate a stock offering by D of 50 percent of its stock, D distributes all the stock of C pro rata to D's shareholders. D issues new shares amounting to 50 percent of its stock to the public in a public offering 7 months after the distribution.

(ii) No Safe Harbor applies to this acquisition. Safe Harbor V, relating to public trading, does not apply to public offerings (paragraph (f)(5)(ii)(A) of this section).

(iii) The issue is whether the distribution of C and the public offering by D are part of a plan. To determine whether the distribution of C and the public offering by D are part of a plan, D must consider all the facts and circumstances, including those described in paragraph (d) of this section.

(iv) The following tends to show that the distribution of C and the public offering by D are part of a plan: D discussed the public offering with its investment banker before the distribution (paragraph (d)(2)(iii) of this section), D was motivated by a business purpose to facilitate the public offering (paragraph (d)(2)(vii) of this section), and there were substantial negotiations regarding the public offering within 6 months after the distribution (paragraph (d)(2)(viii) of this section).

(v) None of the facts and circumstances listed in paragraph (d)(3) of this section, tending to show that a distribution and an acquisition are not part of a plan, exist in this case.

(vi) The distribution of C and the public offering by D are part of a plan under paragraph (b)(1) of this section.

*Example 4. Public offering followed by unexpected opportunity.* (i) *Facts.* D's managers, directors, and investment banker discuss the possibility of offering C stock to the public. D decides to distribute C pro rata to D's shareholders solely to facilitate a 20 percent stock offering by C. To take advantage of favorable market conditions, C issues new shares amounting to 20 percent of its stock in a public offering 1 month before D distributes its remaining 80 percent of the C stock. The public offering documents disclose the intended distribution of C, which is expected to occur shortly after the public offering. At the time of the distribution, it is not reasonably certain that an acquisition will occur, an agreement, understanding, or arrangement concerning an acquisition will exist, or substantial negotiations concerning an acquisition will occur within 6 months. Two months after the distribution, C is approached unexpectedly regarding an opportunity to acquire X. Five months after the distribution, C acquires X in exchange for 40 percent of the C stock.

(ii) *Public offering.* (A) No Safe Harbor applies to the public offering. Safe Harbor V, related to public trading, does not apply to public offerings (paragraph (f)(5)(ii)(A) of this section).

(B) The issue is whether the 20 percent public offering by C and the distribution by D of the remaining C stock are part of a plan. To determine whether the distribution and the public offering are part of a plan, D must consider all the facts and circumstances, including those described in paragraph (d) of this section.

(C) Under paragraph (d)(2) of this section, the following tends to show that the distribution of C and the public offering are part of a plan: D discussed the distribution with its investment banker before the public offering (paragraph (d)(2)(vi) of this section), D was motivated by a business purpose to facilitate the public offering (paragraph (d)(2)(vii) of this section), and the public offering and the distribution occurred within 6 months of each other (paragraph (d)(2)(viii) of this section).

(D) None of the facts and circumstances listed in paragraph (d)(3) of this section, tending to show that a distribution and an acquisition are not part of a plan, exist in this case.

(E) The public offering of C and the distribution of C are part of a plan under paragraph (b)(1) of this section.

(iii) *X acquisition.* (A) No Safe Harbor applies to the X acquisition.

(B) The issue is whether the distribution of C and the acquisition by C of X are part of a plan. To determine whether the distribution of C and the acquisition by C of X are part of a plan, D must consider all the facts and circumstances, including those described in paragraph (d) of this section.

(C) Under paragraph (d)(2) of this section, the following tends to show that the distribution of C and acquisition by C of X are part of a plan: The distribution and the acquisition occurred within 6 months of each other (paragraph (d)(2)(viii) of this section). The fact described in paragraph (d)(2)(vii) of this section does not exist in this case because D's business purpose was to facilitate the public offering and C's acquisition of X is not similar to that acquisition.

(D) Under paragraph (d)(3) of this section, the following tends to show that the distribution of C and the acquisition by C of X are not part of a plan: Neither D, C, nor their respective controlling shareholders discussed the acquisition of X or a similar acquisition with potential acquirers before the distribution (paragraph (d)(3)(i) of this section), D had a substantial business purpose for the distribution other than a business purpose to facilitate the acquisition of X or a similar acquisition (paragraph (d)(3)(vi) of this section), and the distribution would have occurred at approximately the same time and in similar form regardless of the acquisition of X (paragraph (d)(3)(vii) of this section). The distribution was announced and accomplished to facilitate the 20 percent public offering by C. D and C were unaware of the opportunity to acquire X at the time of the distribution.

(E) Weighing the facts and circumstances, the acquisition by C of X and the distribution of C by D are not part of a plan under paragraph (b)(1) of this section.

(F) If C's acquisition of X had occurred more than 6 months after the distribution and had not been the subject of an agreement, understanding, arrangement, or substantial negotiations before the date that is 6 months after the distribution, Safe Harbor II would have applied to C's acquisition of X.

*Example 5.* Hot market. (i) D is a widely held corporation the stock of which is listed on an established market. D announces a

distribution of C and distributes C pro rata to D's shareholders. By contract, C agrees to indemnify D for any imposition of tax under section 355(e) caused by the acts of C. The distribution is motivated by a desire to improve D's access to financing at preferred customer interest rates, which will be more readily available if D separates from C. At the time of the distribution, although D has not been approached by any potential acquirer of C, it is reasonably certain that within 6 months after the distribution either an acquisition of C will occur or there will be an agreement, understanding, arrangement, or substantial negotiations regarding an acquisition of C. Corporation Y acquires C in a merger described in section 368(a)(2)(E) within 6 months after the distribution. The C shareholders receive less than 50 percent of the stock of Y in the exchange.

(ii) No Safe Harbor applies to this acquisition.

(iii) The issue is whether the distribution of C and the acquisition of C by Y are part of a plan. To determine whether the distribution of C and the acquisition of C by Y are part of a plan, D must consider all the facts and circumstances, including those described in paragraph (d) of this section.

(iv) Under paragraph (d)(2) of this section, the following tends to show that the distribution of C and the acquisition of C by Y are part of a plan: The acquisition and the distribution occurred within 6 months of each other (paragraph (d)(2)(viii) of this section). In addition, the distribution may be motivated by a business purpose to facilitate the acquisition or a similar acquisition because there is evidence of a business purpose to facilitate an acquisition by reason of the fact that at the time of the distribution it was reasonably certain that an acquisition of C would occur or there would be an agreement, understanding, arrangement, or substantial negotiations regarding an acquisition of C within 6 months after the distribution (paragraphs (d)(2)(vii) and (e)(1)(i) of this section).

(v) Under paragraph (d)(3) of this section, the following tends to show that the distribution of C and the acquisition of C by Y are not part of a plan: Neither D, C, nor their respective controlling shareholders discussed the acquisition or a similar acquisition with Y or any other potential acquirers before the distribution (paragraph (d)(3)(i) of this section). Furthermore, D may be able to demonstrate that the distribution was motivated in whole or substantial part by a corporate business purpose other than a business purpose to facilitate the acquisition or a similar acquisition (paragraph (d)(3)(vi) of this section). D's stated purpose for the distribution (facilitating D's access to favorable financing) must be evaluated in light of the evidence of a business purpose to facilitate an acquisition. D also may be able to demonstrate that the distribution would have occurred at approximately the same time and in similar form regardless of the acquisition (paragraph (d)(3)(vii) of this section).

(vi) Under paragraph (e)(5) of this section, the existence of the indemnity is irrelevant in analyzing whether the distribution and acquisition of C are part of a plan.

(vii) In determining whether the distribution of C and the acquisition of C by Y are part of a plan, one should consider the importance of D's stated business purpose for the distribution in light of the reasonable certainty that C would be acquired or there would be an agreement, understanding, arrangement, or substantial negotiations regarding an acquisition of C within 6 months after the distribution. If D's stated business purpose for the distribution is substantial even though the reasonable certainty that C would be acquired is evidence of a business purpose to facilitate an acquisition, and if D would have distributed C regardless of Y's acquisition of C, Y's acquisition of C and D's distribution of C are not part of a plan.

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

(ii) No Safe Harbor applies to this acquisition.

(iii) The issue is whether the acquisition of X by D and the distribution of C are part of a plan. To determine whether the distribution of C and the acquisition of X by D are part of a plan, D must consider all the facts and circumstances, including those described in paragraph (d) of this section.

(iv) Under paragraph (d)(2) of this section, the following tends to show that the acquisition of X by D and the distribution of C are part of a plan: The acquisition and the distribution occurred within 6 months of each other (paragraph (d)(2)(viii) of this section). Also, the distribution may be motivated by a business purpose to facilitate the acquisition or a similar acquisition because there is evidence of a business purpose to facilitate an acquisition by reason of the fact that the acquisition occurred after the public announcement of the planned distribution (paragraphs (d)(2)(vii) and (e)(1)(ii) of this section).

(v) Under paragraph (d)(3) of this section, D would assert that the following tends to show that the distribution of C and the acquisition of X by D are not part of a plan: The distribution was motivated by a corporate business purpose other than a business purpose to facilitate the acquisition or a similar acquisition (paragraph (d)(3)(vi) of this section), and the distribution would have occurred at approximately the same time and in similar form regardless of the acquisition (paragraph (d)(3)(vii) of this section). That D decided to distribute C and announced that decision before it became aware of the opportunity to acquire X suggests that the distribution would have occurred at approximately the same time and in similar form regardless of D's acquisition of X. X's lack of participation in the decision also helps establish that fact.

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

*Example 7. Multiple acquisitions.* [Reserved]

(n) *Effective date.* This section applies to distributions occurring August 3, 2001.

Approved: July 26, 2001.

**Mark A. Weinberger,**

*Assistant Secretary of the Treasury.*

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

[FR Doc. 01–19353 Filed 8–2–01; 8:45 am]

**BILLING CODE 4830–01–P**

---

## DEPARTMENT OF THE TREASURY

## Bureau of Alcohol, Tobacco and Firearms

## 27 CFR Parts 178 and 179

**[T.D. ATF–461; Ref: Notice No. 877]**

**RIN 1512–AB84**

## Identification Markings Placed on Firearms (98R–341P)

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

**ACTION:** Final rule, Treasury decision.

**SUMMARY:** The Bureau of Alcohol, Tobacco and Firearms (ATF) is amending the regulations to prescribe minimum height and depth requirements for identification markings placed on firearms by licensed importers and licensed manufacturers. Specifically, we are requiring a minimum height of 1 1/16 inch and a minimum depth of .003 inch for serial numbers and a minimum depth of .003 inch for all other required markings. We believe that these minimum standards are necessary to ensure that firearms are properly identified in accordance with the law. In addition, the final regulations will facilitate our ability to trace firearms used in crime.

**DATES:** This rule is effective January 30, 2002.

**FOR FURTHER INFORMATION CONTACT:** James P. Ficaretta, Regulations Division,

Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8210).

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 923(i) of the Gun Control Act of 1968 (GCA), as amended (18 U.S.C. Chapter 44), requires licensed importers and licensed manufacturers to identify, by means of a serial number, each firearm imported or manufactured. The serial number must be engraved, cast, or stamped on the receiver or frame of the weapon in such manner as the Secretary of the Treasury prescribes by regulation. With respect to certain firearms subject to the National Firearms Act (e.g., machine guns), 26 U.S.C. 5842 requires each manufacturer and importer and anyone making a firearm to identify each firearm by a serial number. The serial number may not be readily removed, obliterated, or altered. Section 5842 also requires the firearm to be identified by the name of the manufacturer, importer, or maker, and such other identification as the Secretary may prescribe by regulation.

Regulations that implement section 923(i) are set forth in 27 CFR 178.92. In general, this section requires each licensed manufacturer or licensed importer of firearms to legibly identify each firearm by engraving, casting, stamping (impressing), or otherwise conspicuously placing on the frame or receiver an individual serial number. The serial number must be placed in a manner not susceptible of being readily obliterated, altered, or removed.

Section 178.92 also requires licensed importers and licensed manufacturers to conspicuously place the following identification markings on the frame, receiver, or barrel of each firearm imported or manufactured in a manner not susceptible of being readily obliterated, altered, or removed:

1. The model, if such designation has been made;
2. The caliber or gauge;
3. The name (or recognized abbreviation of same) of the manufacturer and also, when applicable, of the importer;
4. In the case of a domestically made firearm, the city and State (or recognized abbreviation thereof) where the licensed manufacturer maintains its place of business; and
5. In the case of an imported firearm, the name of the country in which manufactured and the city and State (or recognized abbreviation thereof) where the importer maintains its place of business.

The same marking requirements appear in regulations issued under the National Firearms Act at 27 CFR 179.102.

In the case of any semiautomatic assault weapon manufactured after September 13, 1994, the regulations also require that the frame or receiver be marked ''RESTRICTED LAW ENFORCEMENT/GOVERNMENT USE ONLY'' or, in the case of weapons manufactured for export, ''FOR EXPORT ONLY'' (27 CFR 178.92(a)(2)).

## II. Discussion

The GCA requires Federal firearms licensees (FFLs) to maintain records of their acquisitions and dispositions of firearms, including complete and accurate descriptions of the firearms. One of the principal objectives of the GCA is to facilitate the tracing of firearms used in crime ''to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence * * *.'' Gun Control Act of 1968, § 101, 82 Stat. 1213. To accomplish this objective, section 178.92 requires that each manufacturer or importer utilize an individual serial number for each firearm manufactured or imported and prohibits the duplication of any serial number placed by the manufacturer or importer on any other firearm. Furthermore, section 922(k) of the GCA makes it unlawful for any person to transport, ship, possess, or receive, in interstate or foreign commerce, any firearm that has had the importer's or manufacturer's serial number removed, obliterated, or altered.

The serial number, along with other required markings such as caliber, model, name of manufacturer, and city and State of the manufacturer or importer make any given firearm uniquely identifiable and traceable. Firearms tracing is an integral part of any investigation involving the criminal use of firearms. The systematic tracking of firearms from the manufacturer or U.S. importer to the first retail purchaser enables law enforcement agencies to identify suspects involved in criminal violations, determine if the firearm is stolen, and provide other information relevant to an investigation. Our National Tracing Center (NTC) maintains the capability to trace recovered firearms used in crimes. Over the years, the NTC has experienced a substantial increase in the number of requests received for crime gun traces by Federal, State, and local law enforcement agencies. The total number of requests for gun traces increased from 77,000 in 1995 to approximately 200,000 in 1997.

Prior to this rulemaking proceeding, there were no minimum standards concerning size and depth of impression for markings on firearms. The regulations required that the identifying information, including the serial number, be legible, conspicuous, and placed on the firearm ''in a manner not susceptible of being readily obliterated, altered, or removed.'' The lack of specific minimum standards has caused problems for licensees in properly recording identifying information in their required records, particularly with respect to serial numbers that are very small or are not applied to a uniform depth. Moreover, worn, hard-to-read markings often result in State and local law enforcement officers forwarding erroneous information to ATF in connection with a trace request. Serial numbers that are stamped very lightly on the frame or receiver of the firearm are more susceptible to being easily obliterated, altered, or removed. These problems often hinder our efforts to trace a particular firearm. The Johns Hopkins Center for Gun Policy and Research provided us with the following information:

> We have been informed by the Baltimore Police Department that of the almost 3,700 crime-guns recovered by them in 1998, 15% had obliterated serial numbers. Nationwide it is estimated that between 9 and 20 percent of the crime-guns recovered have had their serial numbers removed.

## III. Notice of Proposed Rulemaking

To reduce the problem of incorrect record entries by licensees and to make identification markings less susceptible to being readily obliterated, altered, or removed, on June 23, 1999, we published a notice in the **Federal Register** proposing to amend the regulations to prescribe minimum height and depth requirements for identification markings placed on firearms (Notice No. 877, 64 FR 33450). Specifically, we proposed that licensed manufacturers and licensed importers cast, stamp (impress) or engrave serial numbers to a depth of at least .005 inch and in a print size no smaller than 3/32 inch. We also proposed that all other required markings, including the special markings for semiautomatic assault weapons, be cast, stamped (impressed) or engraved to a depth of at least .005 inch. We did not propose to require a minimum height requirement of 3/32 inch for all identification markings since such a requirement would make it difficult to fit all the information on a firearm, particularly in the case of handguns.

As stated in the notice, we believed that the minimum standards proposed

would ensure that firearms are properly identified in accordance with the law. In addition, we stated that the proposed regulations, if adopted, would facilitate our ability to trace firearms used in crime. The comment period for Notice No. 877 closed on September 21, 1999.

## IV. Analysis of Comments/Final Rule

We received 18 comments in response to Notice No. 877. Comments were submitted by a Federal agency (Department of the Treasury—U.S. Customs Service), Federal firearms licensees, the Canadian Firearms Registry, Johns Hopkins University (School of Hygiene and Pubic Health—Center for Gun Policy and Research), and two organizations (the International Association of Chiefs of Police and the Sporting Arms and Ammunition Manufacturers' Institute).

### *A. Minimum Depth for Serial Numbers and All Other Required Markings*

Fourteen comments addressed our proposal to require a minimum depth of .005 inch for all required identification markings placed on firearms, including serial numbers. Three commenters, all Federal firearms licensees, supported the proposed regulation. One of the commenters stated that it currently impresses the required information to a depth of .005 inch. Another commenter, a manufacturer and importer of rifles and pistols for the civilian and law enforcement markets, stated that it currently engraves serial numbers and other information on pistols to a depth of at least .005 inch.

Eleven comments expressed opposition to our proposal. Most commenters maintained that they can mark firearms to a depth of approximately .003 inch using their present equipment. However, in order to comply with the minimum .005 inch depth proposed by ATF, they would need to purchase new equipment at great expense. In its comment, the Sporting Arms and Ammunition Manufacturers' Institute (SAAMI), an organization that represents the majority of the major firearms manufacturers, explained that its member companies place required identification markings on firearms by rolling, electro/chemical etch, multiple pin impingement or laser etch. SAAMI elaborated on the industry's concerns regarding compliance with the proposed regulation as follows:

> Most [member companies] roll the serial numbers and other information on to the gun. This method requires high forces to get the impressions deep enough. It requires ¾ ton per 3/32-inch (.094) character to go 0.005 inches deep in mild steel and 1 ton in medium steel. Some companies do not now, and cannot go 0.005 inches deep with their current equipment. Should pressure be increased to obtain 0.005, unsafe deformation of the barrel and receiver can occur. Some companies use only laser etching to burn the required information into the firearm. This method does not lend itself to deep markings, * * * Laser capabilities vary in their ability to etch to 0.005 inch. Most company's laser engraving equipment cannot meet the proposed BATF depth requirement.

Some commenters provided ATF with cost estimates that would be incurred to comply with the proposed regulation. For example, Thompson/Center Arms Company, Inc. (TC), a licensed manufacturer of sporting firearms, states that it currently presses serial numbers and other required information on firearms to a depth of .003 inch using a 4000 pound press. The commenter contends that adoption of the proposed rule would require it to incur the following costs:

> Compliance with the proposed rule would cost T/C $100,000 in start up costs. T/C would have to purchase a 10 ton press costing $10,000 and a serial stamp costing $8000. Engineering costs to change the process for new tooling would be $35,000. Costs to change the finishing process would be $20,000. Additional costs would be necessary for new inspection tools to verify the depth and for other tooling. Further, compliance with the proposed rule would cost T/C an additional $50,000 annually. More finishing will be required if the numbers must be pressed as deep as proposed. Deeper pressing raises more excess metal around the numbers, requiring more finishing and increasing the rate of rejected receivers. At an estimated 20,000 receivers produced each year, the annual cost in reworking firearms will total $30,000. Additional inspection costs would be incurred. The serial stamp (which costs $8000) will receive more friction and wear and will require replacement more frequently.

Another comment, submitted on behalf of Browning and U.S. Repeating Arms Company, stated that, in general, neither company currently meets the minimum height or depth requirements proposed in the notice. As stated in the comment—

> [T]o impose these minimum standards would unduly burden both companies economically. Conservative estimates set costs well in excess of $100,000 for replacement tooling and obsolescence of spare components. Further, it is most probably the case that we would be unable to meet the requirements with our laser etching facilities and would incur substantial additional costs associated with reconfiguring that operation.

Based on the comments received in response to Notice No. 877, we have reconsidered our proposal to require a minimum depth of .005 inch for all required markings placed on firearms, including serial numbers. The comments clearly demonstrate that adoption of such a proposal would place an undue financial hardship on the industry. We agree with SAAMI's comment that a minimum depth requirement for identification markings should be prescribed ''to a standard that will meet marking objectives but will not create either safety problems or cause significant process and equipment changes for the manufacturer.'' As mentioned, most commenters maintain that they can mark firearms to a depth of approximately .003 inch using their present equipment. SAAMI also acknowledged that most of its member manufacturers could meet a .003 inch depth requirement. Accordingly, this final rule prescribes a minimum depth of .003 inch for all required identification markings placed on firearms, including serial numbers. The depth of all markings, including serial numbers, will be measured from the flat surface of the metal, not the peaks or ridges. We believe that this standard is the minimum necessary to ensure that firearms are properly identified in accordance with the law while at the same time imposing a reasonable burden on the industry.

### *B. Minimum Height for Serial Numbers*

Eleven comments addressed our proposed minimum height requirement of 3/32 inch for serial numbers placed on firearms. Three commenters, all licensed manufacturers, supported the proposal noting that they currently mark serial numbers to that depth.

One commenter, the Canadian Firearms Registry (a national police service of the Royal Canadian Mounted Police), agreed with ATF's decision to establish a minimum height requirement for serial numbers. However, the commenter expressed a concern about the size proposed by ATF stating that while 3/32 inch is legible, ''such small lettering may increase the number of clerical errors in serial numbers use for commercial transactions, in addition to law enforcement issues.''

Seven commenters objected to the proposed minimum 3/32 inch height requirement. Most commenters stated that they could not comply with the proposed type size using their current equipment and that compliance with ATF's proposed rule would require them to purchase new equipment at considerable expense. Some commenters provided us with cost estimates that would be incurred to comply with the proposed regulation.

Several commenters requested that ATF change the minimum height for serial numbers to 1/16 inch. One commenter, a small business FFL, stated the following:

> Small businesses often rely on common 'off the shelf' tools and supplies. The proposed 3/32 of an inch is not a common size for number and letter stamps for metal working where as 1/16 of an inch is. To change sizes would require replacing existing tooling and acquiring new tooling which cost at a minimum 20 times the amount of the standard sizes. This cost is based on current machine tool catalogs. This is a significant cost to small businesses * * *

Another commenter, Colt's Manufacturing Company, Inc., explained that ''[t]he dot matrix and roll mark processes currently in use at Colt's could reliably meet such [1/16 inch] marking requirements.'' In its comment, SAAMI stated that most of its member manufacturers could meet a 1/16 height requirement for serial numbers.

Accordingly, based on the comments received in response to the notice, this final rule establishes a minimum height of 1/16 inch for serial number markings placed on firearms. We believe that this minimum size type will reduce the problem of incorrect record entries of serial numbers by licensees and will facilitate our ability to trace firearms used in crime. The height of serial numbers will be measured the same way that stamps are measured, *i.e.*, the distance between the latitudinal ends of the working (contact) surface of the stamp face/font. Consequently, serial number height will be measured as the distance between the latitudinal ends of the character impression bottoms (bases).

*C. Miscellaneous*

The Johns Hopkins Center for Gun Policy and Research (the Center) expressed support for ATF's efforts to establish minimum depth requirements for serial numbers placed on firearms. However, it is their opinion that compression stamping should be the only method acceptable for the application of serial numbers. While the regulations provide that engraving (etching), casting, and stamping (impressing) are acceptable methods of marking firearms, the commenter believes that the casting and etching methods fail to meet the criterion set forth in the regulations, *i.e.*, that the identifying information placed on firearms be ''in a manner not susceptible of being readily obliterated, altered, or removed.'' Similar concerns were raised by another commenter, the International Association of Chiefs of Police (IACP). The IACP contends that laser-etched serial numbers can be obliterated much easier than stamped ones and, as such, hinder law enforcement efforts to trace the origin of firearms used in crime. The GCA provides that the serial number must be engraved, cast, or stamped on the receiver or frame of a firearm. Laser etching is considered to be an engraving operation. As defined in *The American Heritage Dictionary of the English Language* (Houghton Mifflin Company, Boston, 1976), the word ''engrave'' means ''[t]o carve, cut, or etch (a design or letters) into a material.'' As such, to prohibit the use of casting and etching methods for marking firearms, legislative action would be necessary.

With respect to the Center's contention that casting or etching methods ''fail to meet the criterion of 'not susceptible to being readily obliterated,' '' we would emphasize that all markings can be removed by someone who wishes to make a deliberate effort to remove the markings. Realistically, we need to be concerned about markings that could be worn away during normal use or markings that could not survive normal refinishing processes, *e.g.*, blueing, plating, etc. In addition, susceptibility of being readily obliterated, altered, or removed depends on a number of factors, including the method of marking, the size and depth of marking, and the material. For example, we have seen stamped markings that were so lightly placed on the metal that they could be scratched away with a pen knife. Although the markings were stamped, they could still be readily obliterated and were not in compliance with the regulations. On the other hand, some manufacturers use cast markings that can be deeply placed in the metal and would require considerable effort to remove. Also, markings placed in soft materials such as aluminum or zinc alloys, and especially plastics, are comparatively easy to remove compared to markings in steel. As such, ATF has required manufacturers and importers who use polymer plastic frames to mark serial numbers in a steel plate embedded within the plastic.

The U.S. Customs Service, a federal agency within the Department of the Treasury, also submitted a comment on ATF's proposed regulations. This agency enforces general country of origin marking requirements for foreign articles imported into the United States, pursuant to 19 U.S.C. 1304. Customs is concerned about the type size of the country of origin marking for imported firearms. While ATF's proposed regulations do not prescribe minimum print size requirements for the additional information placed on firearms, including the country of origin marking for imported firearms, Customs notes that regulations addressing country of origin marking are set forth in 19 CFR part 134. Those regulations require the marking to be ''conspicuous,'' which is defined as ''capable of being easily seen with normal handling of the article.'' Customs also advised ATF of additional regulations in 19 CFR 134.46 concerning country of origin marking. Accordingly, these final regulations make a cross reference to Customs' country of origin marking requirements in 19 CFR part 134.

**How This Document Complies With the Federal Administrative Requirements for Rulemaking**

*A. Executive Order 12866*

We have determined that this final rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

*B. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. We hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities because the revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute. Accordingly, a regulatory flexibility analysis is not required.

*C. Paperwork Reduction Act*

The collections of information contained in this final regulation have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(d)) under control numbers 1512–0550. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The collections of information in this final rule are in 27 CFR 178.92 and

179.102. This information is required to properly identify each firearm that is manufactured or imported. The collections of information are mandatory. The likely respondents are businesses.

*Estimated total annual reporting and/or recordkeeping burden:* 5,012 hours.

*Estimated average burden hours per respondent and/or recordkeeper:* 2 hours.

*Estimated number of respondents and/or recordkeepers:* 2,506.

*Estimated annual frequency of responses:* one-time requirement to change size and depth.

*Estimated average annual burden hours per respondent:* 1512–0129—.171 hours; 1512–0130—.12 hours; and 1512–0387—3 hours.

Comments concerning the accuracy of these burden estimates and suggestions for reducing the burden should be directed to the Chief, Document Services Branch, Room 3110, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC 20503.

*Disclosure*

Copies of the notice of proposed rulemaking, all written comments, and this final rule will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC.

*Drafting Information*

The author of this document is James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

**List of Subjects**

*27 CFR Part 178*

Administrative practice and procedure, Arms and ammunition, Authority delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

*27 CFR Part 179*

Administrative practice and procedure, Arms and munitions, Authority delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

**Authority and Issuance**

For the reasons discussed in the preamble, ATF amends 27 CFR Parts 178 and 179 as follows:

## PART 178—COMMERCE IN FIREARMS AND AMMUNITION

**Paragraph 1.** The authority citation for 27 CFR part 178 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 18 U.S.C. 847, 921–930; 44 U.S.C. 3504(h).

**Par. 2.** Section 178.92 is amended by revising the section heading and paragraph (a), and by adding a parenthetical text at the end of the section to read as follows:

### § 178.92 How must licensed manufacturers and licensed importers identify firearms, armor piercing ammunition, and large capacity ammunition feeding devices?

(a)(1) *Firearms.* You, as a licensed manufacturer or licensed importer of firearms, must legibly identify each firearm manufactured or imported as follows:

(i) By engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or placed on the frame or receiver thereof an individual serial number. The serial number must be placed in a manner not susceptible of being readily obliterated, altered, or removed, and must not duplicate any serial number placed by you on any other firearm. For firearms manufactured or imported on and after January 30, 2002, the engraving, casting, or stamping (impressing) of the serial number must be to a minimum depth of .003 inch and in a print size no smaller than 1/16 inch; and

(ii) By engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or placed on the frame, receiver, or barrel thereof certain additional information. This information must be placed in a manner not susceptible of being readily obliterated, altered, or removed. For firearms manufactured or imported on and after January 30, 2002, the engraving, casting, or stamping (impressing) of this information must be to a minimum depth of .003 inch. The additional information includes:

(A) The model, if such designation has been made;

(B) The caliber or gauge;

(C) Your name (or recognized abbreviation) and also, when applicable, the name of the foreign manufacturer;

(D) In the case of a domestically made firearm, the city and State (or recognized abbreviation thereof) where you as the manufacturer maintain your place of business; and

(E) In the case of an imported firearm, the name of the country in which it was manufactured and the city and State (or recognized abbreviation thereof) where you as the importer maintain your place of business. For additional requirements relating to imported firearms, see Customs regulations at 19 CFR part 134.

(2) *Firearm frames or receivers.* A firearm frame or receiver that is not a component part of a complete weapon at the time it is sold, shipped, or otherwise disposed of by you must be identified as required by this section.

(3) *Special markings for semiautomatic assault weapons, effective July 5, 1995.* In the case of any semiautomatic assault weapon manufactured after September 13, 1994, you must mark the frame or receiver ''RESTRICTED LAW ENFORCEMENT/GOVERNMENT USE ONLY'' or, in the case of weapons manufactured for export, ''FOR EXPORT ONLY,'' in a manner not susceptible of being readily obliterated, altered, or removed. For weapons manufactured or imported on and after January 30, 2002, the engraving, casting, or stamping (impressing) of the special markings prescribed in this paragraph (a)(3) must be to a minimum depth of .003 inch.

(4) *Exceptions.* (i) *Alternate means of identification.* The Director may authorize other means of identification upon receipt of a letter application from you, submitted in duplicate, showing that such other identification is reasonable and will not hinder the effective administration of this part.

(ii) *Destructive devices.* In the case of a destructive device, the Director may authorize other means of identifying that weapon upon receipt of a letter application from you, submitted in duplicate, showing that engraving, casting, or stamping (impressing) such a weapon would be dangerous or impracticable.

(iii) *Machine guns, silencers, and parts.* Any part defined as a machine gun, firearm muffler, or firearm silencer in § 178.11, that is not a component part of a complete weapon at the time it is sold, shipped, or otherwise disposed of by you, must be identified as required by this section. The Director may authorize other means of identification of parts defined as machine guns other than frames or receivers and parts defined as mufflers or silencers upon receipt of a letter application from you, submitted in duplicate, showing that such other identification is reasonable and will not hinder the effective administration of this part.

(5) *Measurement of height and depth of markings.* The depth of all markings required by this section will be measured from the flat surface of the metal and not the peaks or ridges. The height of serial numbers required by paragraph (a)(1)(i) of this section will be measured as the distance between the latitudinal ends of the character impression bottoms (bases).

* * * * *

(Approved by the Office of Management and Budget under control number 1512–0550)

## PART 179—MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS

**Par. 3.** The authority citation for 27 CFR Part 179 continues to read as follows:

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

**Par. 4.** Section 179.102 is revised to read as follows:

### § 179.102 How must firearms be identified?

(a) You, as a manufacturer, importer, or maker of a firearm, must legibly identify the firearm as follows:

(1) By engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or placed on the frame or receiver thereof an individual serial number. The serial number must be placed in a manner not susceptible of being readily obliterated, altered, or removed, and must not duplicate any serial number placed by you on any other firearm. For firearms manufactured, imported, or made on and after January 30, 2002, the engraving, casting, or stamping (impressing) of the serial number must be to a minimum depth of .003 inch and in a print size no smaller than 1/16 inch; and

(2) By engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed), or placed on the frame, receiver, or barrel thereof certain additional information. This information must be placed in a manner not susceptible of being readily obliterated, altered or removed. For firearms manufactured, imported, or made on and after January 30, 2002, the engraving, casting, or stamping (impressing) of this information must be to a minimum depth of .003 inch. The additional information includes:

(i) The model, if such designation has been made;

(ii) The caliber or gauge;

(iii) Your name (or recognized abbreviation) and also, when applicable, the name of the foreign manufacturer or maker;

(iv) In the case of a domestically made firearm, the city and State (or recognized abbreviation thereof) where you as the manufacturer maintain your place of business, or where you, as the maker, made the firearm; and

(v) In the case of an imported firearm, the name of the country in which it was manufactured and the city and State (or recognized abbreviation thereof) where you as the importer maintain your place of business. For additional requirements relating to imported firearms, see Customs regulations at 19 CFR part 134.

(b) The depth of all markings required by this section will be measured from the flat surface of the metal and not the peaks or ridges. The height of serial numbers required by paragraph (a)(1) of this section will be measured as the distance between the latitudinal ends of the character impression bottoms (bases).

(c) The Director may authorize other means of identification upon receipt of a letter application from you, submitted in duplicate, showing that such other identification is reasonable and will not hinder the effective administration of this part.

(d) In the case of a destructive device, the Director may authorize other means of identifying that weapon upon receipt of a letter application from you, submitted in duplicate, showing that engraving, casting, or stamping (impressing) such a weapon would be dangerous or impracticable.

(e) A firearm frame or receiver that is not a component part of a complete weapon at the time it is sold, shipped, or otherwise disposed of by you must be identified as required by this section.

(f)(1) Any part defined as a machine gun, muffler, or silencer for the purposes of this part that is not a component part of a complete firearm at the time it is sold, shipped, or otherwise disposed of by you must be identified as required by this section.

(2) The Director may authorize other means of identification of parts defined as machine guns other than frames or receivers and parts defined as mufflers or silencers upon receipt of a letter application from you, submitted in duplicate, showing that such other identification is reasonable and will not hinder the effective administration of this part.

(Approved by the Office of Management and Budget under control number 1512–0550)

Signed: December 15, 2000.

**Bradley A. Buckles,**

*Director.*

Approved: January 8, 2001.

**Timothy E. Skud,**

*Deputy Assistant Secretary (Acting), (Regulatory, Tariff and Trade Enforcement).*

**Editorial note:** This document was received at the Office of the Federal Register July 31, 2001.

[FR Doc. 01–19418 Filed 8–2–01; 8:45 am]

BILLING CODE 4810–31–P

---

## DEPARTMENT OF DEFENSE

## Office of the Secretary

## 32 CFR Part 199

**RIN 0720–AA66**

## TRICARE; Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Eligibility and Payment Procedures for CHAMPUS Beneficiaries Age 65 and Over

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Interim final rule.

**SUMMARY:** This interim final rule implements Section 712 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001. Section 712 extends TRICARE eligibility to persons age 65 and over who would otherwise have lost their TRICARE eligibility due to attainment of entitlement to hospital insurance benefits under Part A of Medicare. In order for these individuals to retain their TRICARE eligibility, they must be enrolled in the supplementary medical insurance program under Part B of Medicare. In general, in the case of medical or dental care provided to these individuals for which payment may be made under both Medicare and TRICARE, Medicare is the primary payer and TRICARE will normally pay the actual out-of-pocket costs incurred by the person. This rule prescribes TRICARE payment procedures and makes revisions to TRICARE rules to accommodate Medicare-eligible CHAMPUS beneficiaries. The Department is publishing this rule as an interim final rule in order to meet the statutorily required effective date. Public comments, however, are invited and will be considered when the rule is published as a final rule.

**DATES:** This rule is effective October 1, 2001. Written comments will be accepted until October 2, 2001.

**ADDRESSES:** Forward comments to Medical Benefits and Reimbursement Systems, TRICARE Management

Activity, 16401 East Centretech Parkway, Aurora, CO 80011–9043.

**FOR FURTHER INFORMATION CONTACT:** Stephen Isaacson, Medical Benefits and Reimbursement Systems, TRICARE Management Activity, telephone (303) 676–3572.

**SUPPLEMENTARY INFORMATION:**

## A. Introduction

On October 30, 2000, the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106–398, 114 Stat. 1654) was signed into law. This interim final rule implements section 712 of this Act, and is effective October 1, 2001. It extends TRICARE eligibility to persons age 65 and over. This beneficiary group previously lost TRICARE eligibility due to attaining entitlement to hospital insurance benefits under Part A of Medicare.

This regulation and the statute it implements represent the most significant expansion of benefits in the Military Health System since 1956, when Congress created CHAMPUS to supplement space available care in military treatment facilities. As an indication of this, in FY–2000, DoD spent an estimated $1.4 billion providing space available health care in military facilities to beneficiaries over age 65; in FY–2002, in addition to this anticipated level of military facility services, DoD will spend another approximately $3.9 billion as second payer to Medicare for civilian sector inpatient and outpatient services and primary payer for civilian pharmacy outpatient drugs. These new benefits for retirees and their eligible family members over age 65 result in a remarkably comprehensive health care benefit with minimal beneficiary out-of-pocket costs.

## B. Eligibility

As specified further in the regulation, to be eligible for TRICARE, a person is required to be a retiree, a dependent, or survivor who is entitled to Medicare Part A, 65 years of age or older, and enrolled in Medicare Part B. Specifically the following are eligible:

- A retired uniformed service member—i.e., a former member of a uniformed service who is entitled to retired or retainer pay or equivalent pay.
- A dependent (except for parents or parents-in-law) of:
- A retired member;
- A member who died while on active duty for more than 30 days; or
- A member who died from an injury, illness, or disease incurred or aggravated while the member was on active duty for less than 31 days, was on active duty for training, was on inactive duty training, or was traveling to or from a place for the performance of such active duty, active duty for training, or inactive-duty training.
- A former spouse who has not remarried and who does not have an employer-sponsored health plan and meets the criteria established by 10 U.S.C. 1072(2).

**Note:** Although parents and parents-in-law may be considered eligible dependents for care in uniformed services healthcare facilities, and are eligible for the TRICARE Senior Pharmacy benefit, they have never been eligible for TRICARE, and these provisions do not change that in any way.

We are also making a technical change to the regulatory eligibility provisions regarding changes that result in termination of TRICARE eligibility. Currently, the regulation states that when a beneficiary loses TRICARE eligibility due to attainment of entitlement to Medicare Part A at age 65, TRICARE eligibility is lost at 12:01 a.m. on the last day of the month preceding the month of attainment of age 65. This is incorrect. It should be 12:01 a.m. on the first day of the month in which the beneficiary becomes entitled to Medicare. Otherwise the beneficiary would have no coverage (neither TRICARE nor Medicare) for the last day of the month before becoming entitled to Medicare.

## C. Scope of Benefit

Under 10 U.S.C. 1086(c), retirees, authorized dependents and survivors are entitled to TRICARE. In general, TRICARE will pay for medically necessary services and supplies required in the diagnosis and treatment of illness or injury. Benefits include specified medical services and supplies from authorized civilian sources such as hospitals, other authorized institutional providers, physicians, other authorized individual professional providers, and professional ambulance services, prescription drugs, authorized medical supplies, and rental or purchase of durable medical equipment.

Eligibility for these services now no longer expires when the beneficiary attains entitlement to Medicare Part A upon turning age 65, as long as the beneficiary enrolls in Medicare Part B. These beneficiaries are now entitled to both Medicare healthcare services and TRICARE healthcare services. Most healthcare services payable by one program are also payable under the other program. However, there are services that are payable under Medicare or TRICARE that are not payable under the other program. For example, certain chiropractic services are payable by Medicare, but are not payable under TRICARE. Conversely, TRICARE pays much of the cost for prescription drugs for Medicare entitled beneficiaries, a benefit that currently is not available under Medicare. In the case of a beneficiary who has other health insurance also, that insurance will typically pay after Medicare and before TRICARE.

Using the chiropractic services example above, Medicare has the sole responsibility for payment of healthcare services or supplies that are a benefit only under Medicare. The new law extends TRICARE eligibility but does not expand the scope of TRICARE benefits available to this group of beneficiaries beyond the scope of TRICARE benefits available to other retirees and their families. Therefore, if a healthcare service or supply is a benefit payable only by Medicare, but not TRICARE, then Medicare has sole responsibility for payment of the healthcare service or supply, as defined by Medicare, and the beneficiary has the responsibility to pay any corresponding Medicare cost-share or deductible. Likewise, if a healthcare service or supply is a benefit payable only by TRICARE, but not Medicare, then TRICARE has sole responsibility for payment of the healthcare service or supply, and the beneficiary has the responsibility to pay any corresponding TRICARE cost-shares or deductibles.

Whether a healthcare service is a benefit provided and paid for under Medicare only, TRICARE only, or both, will have an impact on the beneficiary's potential cost sharing liability. Both Medicare and TRICARE generally use the same coding systems for identifying the healthcare services or supplies provided to the beneficiary. Both Medicare and TRICARE use the Current Procedural Terminology (CPT) codes to identify the professional services provided to the beneficiary. Both also use the DSM–IV (Diagnostic and Statistical Manual of Mental Disorders, fourth edition) and ICD–9–CM (International Classification of Diseases, ninth revision, Clinical Modification) diagnosis codes and DRG (Diagnostic Related Group) payment codes for inpatient services. Whether a healthcare service or supply is a benefit payable under Medicare and TRICARE, Medicare only, or TRICARE only will normally be accomplished by comparing these various codes and determining whether payment would be made under the facts and circumstances by both Medicare and TRICARE, or only under one of the programs.

Most healthcare services are a benefit provided and paid for by both Medicare

and TRICARE. However, for some healthcare services, Medicare and TRICARE have different requirements or prerequisites that must be met before the service is reimbursable under their respective programs. For example, Medicare will provide payment for skilled nursing facility (SNF) care, but currently requires as a prerequisite that a beneficiary must have been a hospital inpatient for at least three days before the SNF admission. Medicare currently requires the beneficiary to pay no cost share for the first 20 days of the stay, whereupon the cost share increases to about $100 per day thereafter. Medicare will provide payment for up to 100 days of SNF care in a benefit period. TRICARE on the other hand does not require the beneficiary to be hospitalized as an inpatient before admission to a SNF. TRICARE will pay for all medically necessary care, and does not have a 100-day limit in a benefit period. TRICARE's cost-share is also different, in that there is a $150 per individual/$300 per family deductible for healthcare services in a fiscal year, and a cost-share of the lesser of 25% of the institutional charges or a flat fee per day, up to the catastrophic cap limit of $3,000. As another example, TRICARE is required by law to require preadmission authorization before inpatient mental health services may be provided, except in the case of an emergency, and then approval for the continuation of services is required for care beyond 72 hours. If preauthorization is not obtained, it is not a medical service that is payable under both programs.

Both Medicare and TRICARE have cost-shares and deductibles associated with the healthcare services that they provide under their respective plans that the beneficiary is responsible for paying. For healthcare services that are payable only under one plan, and not both, beneficiaries will continue to be responsible for payment of their applicable Medicare or TRICARE cost-share and deductible. However, for healthcare services for which payment may be made under both Medicare and TRICARE, the beneficiary's liability is different. TRICARE will pay up to the beneficiary's legal liability the actual out-of-pocket costs incurred by the beneficiary over the sum of the amount paid for the care under Medicare and the total of all amounts paid or payable by third party payers other than Medicare (such as other health insurance).

The most common situation will be where the healthcare provided is a benefit payable under both Medicare and TRICARE. The beneficiary will normally have no out-of-pocket expense. In these instances, TRICARE payment will be equal to the remaining beneficiary liability after Medicare processes the claim. For example, if the first claim of the fiscal year for a physician's services were submitted for $50, Medicare would apply the entire amount to the Medicare deductible, and TRICARE would pay the full $50 (assuming the full amount is allowable under TRICARE), so that the beneficiary would have no out-of-pocket expense.

There are exceptions to the provision that the beneficiary will have no out-of-pocket expense. The healthcare service must not only be a benefit under both Medicare and TRICARE, but it must be payable by both Medicare and TRICARE. There are circumstances when Medicare cannot make any payment even though the service is generally a benefit under Medicare. These include services provided to a beneficiary who lives or travels overseas and instances when the beneficiary has exhausted his or her Medicare benefits (e.g., inpatient hospital care beyond 150 days in a benefit period). In these circumstances TRICARE will process the claim as a primary payer and the beneficiary will have the same cost sharing requirement as do retirees and their dependents under age 65. Beneficiary out-of-pocket expenses would be limited to $3,000 by the TRICARE catastrophic cap. It is important to note that in order for beneficiaries who live or travel overseas to retain TRICARE eligibility, the law requires that they still must be enrolled in Part B of Medicare even though Medicare will make no payment for services provided overseas.

As noted above, for some healthcare services, Medicare and TRICARE have different requirements or prerequisites that must be met before the service is reimbursable under their respective programs. These give rise to special payment approaches. In the case of skilled nursing facility care that does not qualify for Medicare reimbursement (because the patient was not a hospital inpatient prior to the skilled nursing facility admission, or for days of care beyond the 100-days Medicare limit) TRICARE will be the primary payer, and applicable TRICARE beneficiary cost sharing would be charged. Beneficiary out-of-pocket expenses would be limited to $3,000 by the TRICARE catastrophic cap. In the case of a nonemergency mental health admission for which TRICARE preadmission authorization is not obtained, TRICARE would not provide payments secondary to the Medicare payments.

There may also be some special circumstances that arise in connection with Medicare-eligible beneficiaries enrolled in a Medicare+Choice plan. TRICARE will cover the normal copayments under a Medicare+Choice plan, but special claims procedures will be applicable. Another special circumstance would arise if a Medicare+Choice enrollee obtains unauthorized out-of-system care that the Medicare+Choice plan will not cover or will only partially cover. Because Medicare already paid for the health care the beneficiary needs in the form of a capitation payment to the Medicare+Choice plan, TRICARE will not become primary payer for the services that would have been covered by the Medicare+Choice plan had the beneficiary followed applicable requirements. If TRICARE did become primary payer, the result would be double payment by the Government for the services, which is not supportable under the statute. In such a case, the TRICARE payment is limited to the amount TRICARE would have paid had the beneficiary received care within the structure and procedures of the Medicare+Choice plan. This is consistent with long-standing CHAMPUS payment rules pertaining to double coverage in the case of health maintenance organizations or other plan requirements, which we are codifying in section 199.8.

It should also be noted that under the statute, if a Medicare-eligible beneficiary also has other health insurance, the other health insurance pays after Medicare and before TRICARE. For this purpose, other health insurance includes Medicare supplemental insurance. This means that TRICARE is secondary to Medicare supplements. Some Medicare supplements are available to some beneficiaries based upon their spouse's past employment, or their employment after retirement from the uniformed services. Some Medicare supplements are available to anyone who is age 65 or older, regardless of past employment status. Since TRICARE will provide benefits that are significantly more generous than most Medicare supplements for Medicare entitled beneficiaries, in addition to requiring no premium, we expect that most beneficiaries who qualify for TRICARE will drop their Medicare supplements that are not based upon their past employment.

In the special case of persons who continue to work after age 65, and have health insurance provided pursuant to their employment, Medicare is the secondary payer to the employer-based

health insurance. Because TRICARE is always last payer when a beneficiary has Medicare and/or any other health insurance, TRICARE would be the tertiary payer in this special case.

**D. Beneficiaries Under Age 65**

In 1992 and 1993 there were several statutory changes that extended TRICARE eligibility for certain beneficiaries who became eligible for Medicare. These beneficiaries had to be eligible for Medicare due to disability or end stage renal disease, had to be under age 65, and had to be enrolled in Part B of Medicare. Based on the congressional intent at that time, we have processed claims for these beneficiaries using the double coverage procedures applicable to all other double coverage situations. As a result, depending on the circumstances of the claim, the beneficiary could be liable for out-of-pocket expenses, even when the service is a benefit under both Medicare and TRICARE. These beneficiaries who are under age 65 and entitled to both Medicare and TRICARE will now have the same payment procedures applied to them as those used for beneficiaries who are entitled Medicare Part A because of age. This will be effective October 1, 2001.

On another matter relating to Medicare-eligible beneficiaries under age 65, section 712 of the National Defense Authorization Act for Fiscal Year 2001 made a conforming amendment to title 10 United States Code section 1086(d). That statute requires that the administering Secretaries develop a mechanism to notify persons under age 65 who would be eligible for both Medicare and TRICARE, except that they have declined to enroll in Medicare Part B. We carried out a match of our eligibility records with Medicare records in 1998, and in 1999 sent letters to about 16,000 beneficiaries identified as eligible for Medicare Part A but not enrolled in Part B. A mechanism for ongoing identification and notification of such persons is being developed.

**E. Appeals**

Medicare has sole responsibility for paying for healthcare services that are a benefit payable only by Medicare. TRICARE has sole responsibility for paying for healthcare services that are a benefit payable only by TRICARE. Medicare has primary responsibility for paying for healthcare services that are a benefit payable under both programs. Both Medicare and TRICARE offer an appeal process when a claim for healthcare services or supplies is denied. TRICARE beneficiaries entitled to Medicare Part A, who are enrolled in Medicare Part B, and/or their providers will have the same appeal rights as other TRICARE beneficiaries and their providers under sections 199.10 and 199.15 of this Part for services or supplies that are payable by TRICARE, but not Medicare.

Most healthcare services and supplies are a benefit payable under both Medicare and TRICARE. In these situations, Medicare is the primary payer, and TRICARE will pay the out-of-pocket costs of the beneficiary, up to the legal liability limit of the beneficiary, after any payments by third party insurance. In order to avoid confusion on the part of beneficiaries and providers and to expedite the appeal process, services and supplies denied payment by Medicare will not be considered for coverage by TRICARE if the Medicare denial of payment is appealable under the Medicare appeal process. If, however, a Medicare appeal results in some payment by Medicare, the services and supplies covered by Medicare will be considered for coverage by TRICARE. Services and supplies denied payment by Medicare will be considered for coverage by TRICARE, if the Medicare denial of payment is not appealable under the Medicare appeal process. The appeal procedures set forth in sections 199.10 and 199.15 are applicable to initial determinations by TRICARE under the TRICARE program.

As an example, if Medicare processes a claim for a healthcare service or supply that is a Medicare program benefit, and Medicare denies the claim for a patient-specific reason, the claim will be appealed through the Medicare appeal process. The Medicare decision will be final if Medicare denies the claim for a patient-specific reason (such as lack of medical necessity for the service), and TRICARE will pay nothing on the claim. However, if Medicare pays the claim, then the claim crosses over to TRICARE. TRICARE will either pay the remaining liability, or if it is a service or supply that is not a TRICARE benefit, the claim will be denied. The beneficiary or provider will than have the same appeal rights as other beneficiaries or providers under sections 199.10 and 199.15. When Medicare processes a claim and Medicare denies the claim because it is not a covered healthcare service or supply under Medicare, the claim will cross over to TRICARE. TRICARE will either pay the claim as the primary payer (assuming no other health insurance), or the claim will be denied if the healthcare service or supply is not a TRICARE benefit. The beneficiary or provider will have the same appeal rights as other beneficiaries or providers under sections 199.10 and 199.15.

**F. Quality and Utilization Review Peer Review Organization Program**

**The CHAMPUS Quality and Utilization Review Peer Review**

Organization program, based on specific statutory authority, follows many of the quality and utilization review requirements and procedures in effect for the Medicare quality and utilization review program, subject to adaptations appropriate for the TRICARE program. In recognition of the similarity of purpose and design between the two programs to ensure coverage of quality care as medically necessary and appropriate, and to avoid unnecessary duplication of effort, the CHAMPUS Quality and Utilization Review Peer Review Organization (PRO) program will apply special procedures to supplies and services furnished to Medicare-eligible TRICARE beneficiaries. These procedures will enable TRICARE to rely upon Medicare determinations of medical necessity and appropriateness in the processing of TRICARE claims as a second payer to Medicare. As a general rule, only in cases involving Medicare-eligible TRICARE beneficiaries where Medicare payment for services and supplies is denied for reasons other than medical necessity and appropriateness will the TRICARE claim or request for services or supplies be subject to review for quality of care and appropriate utilization under the CHAMPUS PRO program. However, there are quality and utilization review requirements under TRICARE that by law are more stringent than Medicare's requirements. For example, inpatient mental health services may not be provided to a patient 19 years of age or older in excess of 30 days in any year, absent a waiver because of medical or psychological circumstances of the patient that takes into account the appropriate level of care for the patient, the intensity of services required by the patient, and the availability of that care. Medicare imposes no similar requirement. In circumstances where TRICARE is required to perform a medical necessity review, and Medicare does not, TRICARE will continue to apply its rules for such review.

**G. TRICARE Triple Option Benefit**

Currently, the TRICARE program features a triple option benefit: a health maintenance organization (HMO)-like option called TRICARE Prime, a preferred provider organization (PPO)-

like option called TRICARE Extra, and an indemnity insurance-like option (i.e., traditional CHAMPUS) called TRICARE Standard. This is based on 10 U.S.C. 1097, which allows DoD to contract with HMOs, PPOs, and insurers for ''alternate delivery of health care.''

As required by law (section 731 of the National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103–160), TRICARE Prime is ''modeled on health maintenance organization plans offered in the private sector and other similar Government health insurance programs.'' This option must offer beneficiaries ''reduced out-of-pocket costs,'' but ''shall be administered so that the costs incurred by the Secretary under the TRICARE program are no greater than would otherwise be incurred'' without this option. TRICARE Prime was structured to comply with this ''cost neutrality'' requirement. In addition, under section 1097(c), ''the Secretary shall, as an incentive for enrollment,'' in TRICARE Prime ''establish reasonable preferences for services'' in military treatment facilities (MTFs).

Current DoD regulations (32 CFR 199.17) implement these statutory provisions for TRICARE Prime. Consistent with the HMO model, enrollees receive reduced copayments in exchange for their agreement generally to ''lock in'' to the designated provider network and follow the referral and utilization management guidance of a primary care manager. As an incentive for enrollment, the MTF priority access system is established in this order: (1) Active duty members; (2) active duty dependents enrolled in Prime; (3) retirees and their dependents enrolled in Prime; (4) active duty dependents not enrolled in Prime; and (5) retirees and their dependents not enrolled in Prime. There is generally no other rationale based on beneficiary grouping for establishing priority access among these five categories or within any of them.

Beneficiaries who do not enroll in TRICARE Prime automatically receive TRICARE Standard coverage, and for practical purposes may be considered to be ''enrolled'' in TRICARE Standard. This option may be preferable for those who prefer freedom of choice of providers. They are not subject to HMO-type management requirements or network lock-in, but they pay standard copayments. They remain eligible for MTF care, but without priority access. Those who wish to use the TRICARE civilian provider network may do so on a visit-by-visit basis under TRICARE Extra. They are not locked in to anything, but obtain some reduced copayments and have the benefit of the TRICARE quality assurance program applicable to network providers.

For several reasons, Medicare-eligible beneficiaries will not fit into the current structure of the triple option benefit when they attain TRICARE eligibility on October 1, 2001. First, they already have zero copayments for most services from civilian providers under their basic TRICARE coverage (i.e., TRICARE Standard), under which Medicare is primary payer and TRICARE pays the Medicare deductible and copayment amounts. Second, Medicare-eligible beneficiaries cannot be ''locked in'' to a DoD-operated HMO-like program while standard Medicare is the primary payer for civilian sector care. Medicare law (sections 1814(c) and 1835(d) of the Social Security Act) prohibits Medicare payments ''to any Federal provider of services'' or for any service for which any provider ''is obligated by * * * a contract with'' a Federal agency ''to render at public expense.'' It is well understood that this means that Medicare will not generally reimburse MTFs. But, in addition, TRICARE Prime's regulation of civilian network operations would, in the case of Medicare-eligible beneficiaries, risk a conflict between the policy of DoD's law that Medicare pay primary to TRICARE and that of Medicare law that Medicare not pay for services covered by another Federal program. Nonpayment by Medicare would conflict with the intended first payer/second payer relationship and also result in a violation of the ''cost neutrality'' requirement for TRICARE Prime. TRICARE Prime is based on the HMO model and there is no way to operate an HMO with two entities administering separate programs.

The only way to offer an HMO involving two financial entities is for them to jointly sponsor the HMO. This was, of course, the rationale for the Medicare Subvention Program that was authorized as a joint demonstration program of DoD and the Department of Health and Human Services under a provision of the Budget Reconciliation Act of 1997. Under the demonstration, DoD operates ''TRICARE Senior Prime.'' This program must meet HHS quality standards and requirements, and Medicare pays for care provided to eligible Medicare beneficiaries. The National Defense Authorization Act for Fiscal Year 2001, section 712, extended the demonstration program for 1 year (through December 31, 2001) and directed the agencies to explore the feasibility of continuing the program. Consistent with that direction, DoD and HHS held discussions on the possibility of extending the program, with the changes that would be necessary to permit this to occur. It has been determined that continuation of the program is not feasible.

Although a Medicare Subvention-type program will not be continued, the Department wants to provide beneficiaries an alternative option for using TRICARE providers without the need to lock in to an HMO-like program. In order to achieve this, the Department has taken steps to establish an MTF enrollment program for primary care, called TRICARE Plus. TRICARE Plus is not addressed in 32 CFR Part 199, because it only affects the operation of military medical treatment facilities, whose operations are not governed by the regulation. We are describing the program here to help the public understand this aspect of TRICARE.

TRICARE Plus builds on another popular demonstration project, the MacDill-65 Demonstration. That program, which has operated at MacDill Air Force Base in Tampa, Florida since 1998, provided opportunity for about 2,000 Medicare-eligible military beneficiaries to enroll to obtain primary care services at the military treatment facility, without being ''locked in'' to an HMO type program. The MacDill demonstration essentially tests the impact of management of available primary care services for Medicare-eligible beneficiaries through a process of ''empanelling'' them with primary care providers at the MTF. For a limited number of enrollees, the MacDill model guarantees primary care access. For care that cannot be provided in the MTF, beneficiaries use their Medicare benefit.

Under TRICARE Plus, beneficiaries eligible for care in MTFs who are not enrolled in TRICARE Prime will be given the opportunity to enroll with an MTF primary care provider, but only to the extent primary care capacity is available. There is no lock-in and no enrollment fee. This will be a way to facilitate primary care appointments when needed. The number of persons accommodated at an MTF will be subject to capacity limitations, so as to assure that their primary care needs will be met. For care from civilian providers, TRICARE Standard or TRICARE Extra rules will apply *provided* the TRICARE Plus beneficiary is eligible for TRICARE Standard or TRICARE Extra. (Beneficiaries eligible for care in an MTF and entitled to Medicare are not required by law to be enrolled in Medicare Part B in order to receive MTF care. Those beneficiaries entitled to Medicare, however, are encouraged to enroll in Part B when enrolling in TRICARE Plus. Otherwise, care received from civilian providers when not

available from the MTF will be the sole financial responsibility of the patient in that the patient is not eligible for TRICARE without enrollment in Medicare Part B.). For services payable by Medicare, Medicare rules will apply, with TRICARE as second payer. For non-MTF care from a network provider for non-Medicare covered services, the reduced cost shares under TRICARE Extra will apply. For non-MTF care from a non-network provider for non-Medicare covered services, the cost shares under TRICARE Standard will apply. This enrollment program is similar to the MacDill demonstration, and is a good potential option for all beneficiaries who have other primary health insurance (Medicare or private insurance). It allows them to take advantage of both of their health programs as well as enroll themselves (without lock-in) with military primary care providers, to the extent they are available.

For retirees and their dependents who have been enrolled in Prime with an MTF primary care manager and are soon to reach age 65, TRICARE Plus will bring several advantages. First, they will likely be able to continue that relationship with their primary care provider, if they wish, subject to availablity. For most care provided in the civilian network, they will have no copayments (as compared to the $12 per visit fee applicable to most visits when they were in Prime). In addition, there will be no enrollment fee. For civilian network care not covered by Medicare, the TRICARE cost share will be 20% rather than the 25% that would be applicable for non-network care. Further, there is no lock-in; for most care they are free to use virtually any civilian provider, with the entire cost paid by Medicare and TRICARE.

For TRICARE Prime enrollees approaching age 65 who have a civilian primary care manager, we expect that in most cases they will be able to continue their primary care relationship. The provider will receive primary payments from Medicare and secondary payments from TRICARE for most services, and the managed care rules of TRICARE Prime will no longer apply.

Thus, on the whole, the transition from TRICARE Prime under 65 to Medicare plus TRICARE at 65 will represent an improved health care benefit. The inclusion of ''TRICARE Plus,'' the new MTF primary care enrollment program offers an additional opportunity for beneficiaries to establish or continue an ongoing relationship with a military health care provider.

If demand for primary care assignment under TRICARE Plus greatly exceeds capacity in MTFs, one option would be to extend the availability of primary care assignment by relying on the civilian provider network established to support TRICARE Prime. The Department does not intend to implement this option unless (1) it can be accomplished within funding constraints, and (2) it is necessary to meet demand for primary care assignment. Incorporation of these requirements into future TRICARE procurements is likely to be more cost-effective than modifying existing contracts.

**H. Regulatory Procedures**

This interim final rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511).

This rule is being issued as an interim final rule, with comment period, as an exception to our standard practice of soliciting public comments prior to issuance. The Assistant Secretary of Defense (Health Affairs) has determined that following the standard practice in this case would be impracticable, unnecessary, and contrary to public interest. This determination is based on the fact that this change directly implements a statutory entitlement enacted by Congress expressly for this purpose, with a statutory effective date of October 1, 2001. All public comments are invited and will be carefully considered. We anticipate the issuance of a final rule within six months of the end of the comment period.

Executive Order 12866 requires certain regulatory assessments for any significant regulatory action, defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This interim final rule is an economically significant regulatory action under Executive Order 12866, as it implements a statutory program that will add over $3 billion for DoD in annual healthcare benefit costs. This cost estimate is based on historical TRICARE costs and an assessment of potential users times average benefit costs per person, and excludes pharmacy benefits that were addressed in implementation of the TRICARE Senior Pharmacy benefit earlier this year. (Approximately 1.5 million persons are potential beneficiaries of this program, and expected benefits per person are about $2,000 per year.) The benefits of the interim final rule include an increased level of health care for Medicare-eligible beneficiaries of the Department of Defense military health system. It has been determined to be major under the Congressional Review Act. However, this rule does not require a regulatory flexibility analysis, as it would have no significant economic impact on a substantial number of small entities. The new benefit is estimated to cost about $3.1 billion per year, beginning in FY 2002. This includes health care costs administrative costs, mostly claims processing, of about $250 million per year.

**List of Subjects in 32 CFR Part 199**

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

## PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

**Authority:** 5 U.S.C. 301 and 10 U.S.C. Chapter 55.

2. Section 199.2 is amended by adding at the appropriate place in alphabetical order the following definition:

### § 199.2 Definitions.

* * * * *

*Director, TRICARE Management Activity.* This term includes the Director, TRICARE Management Activity, the official sometimes referred to in this part as the Director, Office of CHAMPUS (or OCHAMPUS), or any designee of the Director, TRICARE Management Activity or the Assistant Secretary of Defense for Health Affairs who is designated for purposes of an action under this part.

3. Section 199.3 is amended by revising paragraphs (b)(2)(i)(D), (f)(3)(vi), and (f)(3)(vii) and the NOTE following paragraph (f)(3)(vii), as follows:

### § 199.3 Eligibility.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(D) Must not be eligible for Part A of Title XVIII of the Social Security Act (Medicare) except as provided in paragraphs (f)(3)(vii), (f)(3)(viii), and (f)(3)(ix) of this section; and

* * * * *

(f) * * *

(3) * * *

(vi) Attainment of entitlement to hospital insurance benefits (Part A) under Medicare except as provided in paragraphs (f)(3)(vii), (f)(3)(viii), and (f)(3)(ix) of this section. (This also applies to individuals living outside the United States where Medicare benefits are not paid.)

(vii) Attainment of age 65, except for dependents of active duty members, beneficiaries not entitled to part A of Medicare, and beneficiaries entitled to Part A of Medicare who have enrolled in Part B of Medicare. For those who do not retain CHAMPUS, CHAMPUS eligibility is lost at 12:01 a.m. on the first day of the month in which the beneficiary becomes entitled to Medicare.

**Note:** If the person is not eligible for Part A of Medicare, he or she must file a Social Security Administration ''Notice of Disallowance'' certifying to that fact with the Uniformed Service responsible for the issuance of his or her identification card so a new card showing CHAMPUS eligibility can be issued. Individuals entitled only to supplementary medical insurance (Part B) of Medicare, but not Part A, or Part A through the Premium HI provisions (provided for under the 1972 Amendments to the Social Security Act) retain eligibility under CHAMPUS (refer to § 199.8 for additional information when a double coverage situation is involved).

* * * * *

4. Section 199.8 is amended by adding a new paragraph (c)(4) and by revising paragraph (d)(1), as follows:

**§ 199.8 Double Coverage.**

* * * * *

(c) *Application of double coverage provisions.* * * *

(4) *Lack of payment by double coverage plan.* Amounts that have been denied by a double coverage plan simply because a claim was not filed timely or because the beneficiary failed to meet some other requirement of coverage cannot be paid. If a statement from the double coverage plan as to how much that plan would have paid had the claim met the plan's requirements is provided to the CHAMPUS contractor, the claim can be processed as if the double coverage plan actually paid the amount shown on the statement. If no such statement is received, no payment from CHAMPUS is authorized.

(d) *Special considerations.* (1) *CHAMPUS and Medicare.*—(i) *General rule.* In any case in which a beneficiary eligible for both Medicare and CHAMPUS receives medical or dental care for which payment may be made under Medicare and CHAMPUS, Medicare is always the primary payer. For dependents of active duty members, payment will be determined in accordance to paragraph (c) of this section. For all other beneficiaries eligible for Medicare, the amount payable by CHAMPUS shall be the amount of the actual out-of-pocket costs incurred by the beneficiary for that care over the sum of the amount paid for that care under Medicare and the total of all amounts paid or payable by third party payers other than Medicare.

(ii) *Payment limit.* The total CHAMPUS amount payable for care under paragraph (d)(1)(i) of this section may not exceed the total amount that would be paid under CHAMPUS if payment for that care were made solely under CHAMPUS.

(iii) *Application of general rule.* In applying the general rule under paragraph (d)(1)(i) of this section, the first determination will be whether payment may be made under Medicare. For this purpose, Medicare exclusions, conditions, and limitations will be the basis for the determination.

(A) For items or services or portions or segments of items or services for which payment may be made under Medicare, the CHAMPUS payment will be the amount of the beneficiary's actual out of pocket liability, minus the amount payable by Medicare, also minus amount payable by other third party payers, subject to the limit under paragraph (d)(1)(ii) of this section.

(B) For items or services or segments of items or services for which no payment may be made under Medicare, the CHAMPUS payment will be the same as it would be for a CHAMPUS eligible retiree, dependent, or survivor beneficiary who is not Medicare eligible.

(iv) *Examples of applications of general rule.* The following examples are illustrative. They are not all-inclusive.

(A) In the case of a Medicare-eligible beneficiary receiving typical physician office visit services, Medicare payment generally will be made. CHAMPUS payment will be determined consistent with paragraph (d)(1)(iii)(A) of this section.

(B) In the case of a Medicare-eligible beneficiary residing and receiving medical care overseas, Medicare payment generally may not be made. CHAMPUS payment will be determined consistent with paragraph (d)(1)(iii)(B) of this section.

(C) In the case of a Medicare-eligible beneficiary receiving skilled nursing facility services a portion of which is payable by Medicare (such as during the first 100 days) and a portion of which is not payable by Medicare (such as after 100 days), CHAMPUS payment for the first portion will be determined consistent with paragraph (d)(1)(iii)(A) of this section and for the second portion consistent with paragraph (d)(1)(iii)(B) of this section.

(v) *Application of catastrophic cap.* Only in cases in which CHAMPUS payment is determined consistent with paragraph (d)(1)(iii)(B) of this section, actual beneficiary out of pocket liability remaining after CHAMPUS payments will be counted for purposes of the annual catastrophic loss protection, set forth under § 199.4(f)(10). When a family has met the cap, CHAMPUS will pay allowable amounts for remaining covered services through the end of that fiscal year.

(vi) *Effect of enrollment in Medicare+Choice plan.* In the case of a beneficiary enrolled in a Medicare+Choice plan who receives items or services for which payment may be made under both the Medicare+Choice plan and CHAMPUS, a claim for the beneficiary's normal out-of-pocket costs under the Medicare+Choice plan may be submitted for CHAMPUS payment. However, consistent with paragraph (c)(4) of this section, out-of-pocket costs do not include costs associated with unauthorized out-of-system care or care otherwise obtained under circumstances that result in a denial or limitation of coverage for care that would have been covered or fully covered had the beneficiary met applicable requirements and procedures. In such cases, the CHAMPUS amount payable is limited to the amount that would have been paid if the beneficiary had received care covered by the Medicare+Choice plan.

(vii) *Effect of other double coverage plans, including medigap plans.* CHAMPUS is second payer to other third-party payers of health insurance, including Medicare supplemental plans.

(viii) *Effect of employer-provided insurance.* In the case of individuals with health insurance due to their current employment status, the employer insurance plan shall be first payer, Medicare shall be the second payer, and CHAMPUS shall be the tertiary payer.

* * * * *

5. Section 199.10 is amended by revising paragraph (a)(1)(ii) as follows:

**§ 199.10. Appeal and Hearing Procedures.**

(a) * * *

(1) * * *

(ii) *Effect of initial determination.*

(A) The initial determination is final unless appealed in accordance with this chapter, or unless the initial determination is reopened by the

TRICARE Management Activity, the CHAMPUS contractor, or the CHAMPUS peer review organization.

(B) An initial determination involving a CHAMPUS beneficiary entitled to Medicare Part A, who is enrolled in Medicare Part B, may be appealed by the beneficiary or their provider under this section of this Part only when the claimed services or supplies are payable by CHAMPUS and are not payable under Medicare. Both Medicare and CHAMPUS offer an appeal process when a claim for healthcare services or supplies is denied and most healthcare services and supplies are a benefit payable under both Medicare and CHAMPUS. In order to avoid confusion on the part of beneficiaries and providers and to expedite the appeal process, services and supplies denied payment by Medicare will not be considered for coverage by CHAMPUS if the Medicare denial of payment is appealable under Medicare. Because such claims are not considered for payment by CHAMPUS, there can be no CHAMPUS appeal. If, however, a Medicare claim or appeal results in some payment by Medicare, the services and supplies paid by Medicare will be considered for payment by CHAMPUS. In that situation, any decision to deny CHAMPUS payment will be appealable under this section. The following examples of CHAMPUS appealable issues involving Medicare-eligible CHAMPUS beneficiaries are illustrative; they are not all-inclusive:

(*1*) If Medicare processes a claim for a healthcare service or supply that is a Medicare benefit and the claim is denied by Medicare for a patient-specific reason, the claim is appealable through the Medicare appeal process. The Medicare decision will be final if the claim is denied by Medicare. The claimed services or supplies will not be considered for CHAMPUS payment and there is no CHAMPUS appeal of the CHAMPUS decision denying the claim.

(*2*) If Medicare processes a claim for a healthcare service or supply that is a Medicare benefit and the claim is paid, either on initial submission or as a result of a Medicare appeal decision, the claim will be submitted to CHAMPUS for processing as a second payer to Medicare. If CHAMPUS denies payment of the claim, the Medicare-eligible beneficiary or their provider have the same appeal rights as other CHAMPUS beneficiaries and their providers under this section.

(*3*) If Medicare processes a claim and the claim is denied by Medicare because it is not a healthcare service or supply that is a benefit under Medicare, the claim is submitted to CHAMPUS. CHAMPUS will process the claim under Part 199 as primary payer (or as secondary payer if another double coverage plan exists). If any part of the claim is denied, the Medicare-eligible beneficiary and their provider will have the same appeal rights as other CHAMPUS beneficiaries and their providers under this section.

* * * * *

6. Section 199.15 is amended by revising paragraph (a)(6), as follows:

**§ 199.15 Quality and Utilization Review Peer Review Organization Program.**

(a) * * *

(6) *Medicare rules used as model.* The CHAMPUS Quality and Utilization Review Peer Review Organization program, based on specific statutory authority, follows many of the quality and utilization review requirements and procedures in effect for the Medicare Peer Review Organization program, subject to adaptations appropriate for the CHAMPUS program. In recognition of the similarity of purpose and design between the Medicare and CHAMPUS PRO programs, and to avoid unnecessary duplication of effort, the CHAMPUS Quality and Utilization Review Peer Review Organization program will have special procedures applicable to supplies and services furnished to Medicare-eligible CHAMPUS beneficiaries. These procedures will enable CHAMPUS normally to rely upon Medicare determinations of medical necessity and appropriateness in the processing of CHAMPUS claims as a second payer to Medicare. As a general rule, only in cases involving Medicare-eligible CHAMPUS beneficiaries where Medicare payment for services and supplies is denied for reasons other than medical necessity and appropriateness will the CHAMPUS claim be subject to review for quality of care and appropriate utilization under the CHAMPUS PRO program. TRICARE will continue to perform a medical necessity and appropriateness review for quality of care and appropriate utilization under the CHAMPUS PRO program where required by statute, such as inpatient mental health services in excess of 30 days in any year.

7. Section 199.17 is amended by revising paragraphs (a) introductory text, (a)(6)(i), (a)(6)(ii), (b) introductory text, (b)(1), (c) introductory text, (c)(3), (c)(4), and (v), by deleting paragraphs (m)(2)(iii) and (m)(4)(iii), as follows:

**§ 199.17 TRICARE program.**

(a) *Establishment.* The TRICARE program is established for the purpose of implementing a comprehensive managed health care program for the delivery and financing of health care services in the Military Health System.

* * * * *

(6) *Major features of the TRICARE program.* The major features of the TRICARE program, described in this section, include the following:

(i) *Comprehensive enrollment system.* Under the TRICARE program, all health care beneficiaries become classified into one of four enrollment categories:

(A) Active duty members, all of whom are automatically enrolled in TRICARE Prime;

(B) TRICARE Prime enrollees;

(C) TRICARE Standard enrollees, who are all CHAMPUS eligible beneficiaries who are not enrolled in TRICARE Prime;

(D) Non-CHAMPUS beneficiaries, who are beneficiaries eligible for health care services in military treatment facilities, but not eligible for CHAMPUS;

(ii) *Establishment of a triple option benefit.* A second major feature of TRICARE is the establishment of three options for receiving health care:

(A) ''TRICARE Prime,'' which is a health maintenance organization (HMO)-like program. It generally features use of military treatment facilities and substantially reduced out-of-pocket costs for CHAMPUS care. Beneficiaries generally agree to use military treatment facilities and designated civilian provider networks and to follow certain managed care rules and procedures.

(B) ''TRICARE Extra,'' which is a preferred provider organization (PPO) program. It allows TRICARE Standard-enrolled beneficiaries to use the TRICARE provider network, including both military facilities and the civilian network, with reduced out-of-pocket costs. These beneficiaries also continue to be eligible for military medical treatment facility care on a space-available basis.

(C) ''TRICARE Standard'' which is the basic CHAMPUS program. It preserves broad freedom of choice of civilian providers, but does not offer reduced out-of-pocket costs. These beneficiaries continue to be eligible to receive care in military medical treatment facilities on a space-available basis.

* * * * *

(b) *Triple option benefit in general.* Where the TRICARE program is fully implemented, eligible beneficiaries are given the options of enrolling in TRICARE Prime (also referred to as ''Prime'') or TRICARE Standard (also referred to as ''Standard''). In the absence of an enrollment choice, enrollment in Standard is assumed.

(1) *Choice voluntary.* With the exception of active duty members, the choice of whether to enroll in Prime or Standard is voluntary for all eligible beneficiaries. For dependents who are minors, the choice will be exercised by a parent or guardian.

* * * * *

(c) *Eligibility for enrollment.* Where the TRICARE program is fully implemented, all CHAMPUS-eligible beneficiaries who are not Medicare eligible on basis of age are eligible to enroll in Prime or Standard. CHAMPUS beneficiaries who are eligible for Medicare on basis of age (and are enrolled in Medicare Part B) are automatically enrolled in TRICARE Standard. Further, some rules and procedures are different for dependents of active duty members and retirees, dependents, and survivors. In addition, where the TRICARE program is implemented, a military medical treatment facility commander or other authorized individual may establish priorities, consistent with paragraph (c) of this section, based on availability or other operational requirements, for when and whether to offer the enrollment opportunity.

* * * * *

(3) *Retired members, dependents of retired members, and survivors.* (i) Where TRICARE is fully implemented, all CHAMPUS-eligible retired members, dependents of retired members, and survivors who are not eligible for Medicare on the basis of age are eligible to enroll in Prime. After all active duty members are enrolled and availability of enrollment is assured for all active duty dependents wishing to enroll, this category of beneficiaries will have third priority for enrollment.

(ii) If all eligible retired members, dependents of retired members, and survivors within the area concerned cannot be accepted for enrollment in Prime at the same time, the MTF Commander (or other authorized individual) may allow enrollment within this beneficiary group category on a first come, first served basis.

(4) *Enrollment in Standard.* All CHAMPUS-eligible beneficiaries who do not enroll in Prime will remain in Standard.

* * * * *

(v) *Administrative procedures.* The Assistant Secretary of Defense (Health Affairs), the Director, TRICARE Management Activity, and MTF Commanders (or other authorized officials) are authorized to establish administrative requirements and procedures, consistent with this section, this part, and other applicable DoD Directives or Instructions, for the implementation and operation of the TRICARE program.

Dated: July 27, 2001.

**L.M. Bynum,**

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

[FR Doc. 01–19184 Filed 8–2–01; 8:45 am]

BILLING CODE 5001–08–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Parts 51, 52, 96, and 97

**[FRL–7023–8]**

## Availability of Documents for the Response to the Remands in the Ozone Transport Cases Concerning the Method for Computing Growth for Electric Generating Units

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

**ACTION:** Notice of data availability for the $NO_X$ SIP Call and the Section 126 Rule.

**SUMMARY:** The EPA is providing notice that it has placed in the dockets for the two main rulemakings concerning ozone-smog transport in the eastern part of the United States-the Nitrogen Oxides State Implementation Plan Call ( $NO_X$ SIP Call) and the Section 126 Rule-data relevant to the remands by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) concerning growth rates for seasonal heat input by electric generating units (EGUs). In both the $NO_X$ SIP Call and Section 126 rulemakings, EPA determined control obligations with respect to EGUs through the same computation, which included, as one component, estimates of growth in heat input by the EGUs from 1996 to 2007. In two cases decided earlier this year challenging the Section 126 rulemaking and a pair of rulemakings that made technical corrections to the $NO_X$ SIP Call, the D.C. Circuit considered challenges to EPA's calculation of the growth estimate and its use of growth factors. In virtually identical decisions, the Court remanded the growth component to EPA for a better response to certain data presented by the affected States and industry concerning actual heat input, and for a better explanation of EPA's methodology. The EPA is in the process of responding to those remands. The EPA's preliminary view is that its growth calculations were reasonable and can be supported with a more robust explanation, based on the existing record, that takes into account the Court's concerns. In addition, EPA is considering new data that have recently been placed in the dockets for the $NO_X$ SIP Call and Section 126 Rule. These new data appear to confirm the reasonableness of the growth calculations. The EPA is providing a 30-day period for the public to comment on these new data.

**DATES:** Documents were placed in the docket on or about July 27, 2001. The EPA is authorizing a 30-day comment period, ending on September 4, 2001. Comments must be postmarked by the last day of the comment period and sent directly to the Docket Office listed in **ADDRESSES** below (in duplicate form, if possible). In addition, EPA encourages commenters to send copies of their comments directly to the contacts identified below under the section, **FOR FURTHER INFORMATION CONTACT**.

**ADDRESSES:** Comments may be submitted to the Office of Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–96–56 for the $NO_X$ SIP Call and Docket No. A–97–43 for the Section 126 Rule, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460, telephone (202) 260–7548. The EPA encourages electronic submission of comments following the instructions under **SUPPLEMENTARY INFORMATION** of this document. The e-mail address is A-and-R-Docket@epa.gov. No confidential business information should be submitted through e-mail.

Copies of all of the documents have been placed in the docket for the $NO_X$ SIP Call rule, Docket No. A–96–56, and have been incorporated by reference in the docket for the Section 126 Rule, Docket No. A–97–43. These new documents, and other documents relevant to these rulemakings, are available for inspection at the Docket Office, located at 401 M Street SW, Room M–1500, Washington, DC 20460, between 8 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Some of the documents have also been made available in electronic form at the following EPA website: http://www.epa.gov/airmarkets/fednox/126noda/.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning today's document should be directed to Kevin Culligan, Office of Atmospheric Programs, Clean Air Markets Division, 6204M, 1200 Pennsylvania Ave. NW, Washington, DC 20460, telephone (202) 564–9172, e-mail *culligan.kevin@epa.gov;* or Howard J. Hoffman, Office of General Counsel,

2344A, 1200 Pennsylvania Ave. NW, Washington, DC 20460, telephone (202) 564–5582, e-mail *hoffman.howard@epa.gov.* General questions about the Section 126 Rule or the $NO_X$ SIP Call may be directed to Carla Oldham, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD–15, Research Triangle Park, NC, 27711, telephone (919) 541–3347, e-mail oldham.carla@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## Submitting Electronic Comments

Electronic comments are encouraged and can be sent directly to EPA at *A-and-R-Docket@epa.gov*. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments will also be accepted on disks in WordPerfect 8.0 or ASCII file format. All comments in electronic form must be identified by Docket No. A–96–56 for the $NO_X$ SIP Call and Docket No. A–97–43 for the Section 126 Rule. Electronic comments may be filed online at many Federal Depository Libraries.

**Outline**

I. Background
A. Rulemakings
1. $NO_X$ SIP Call
2. Technical Amendments
3. Section 126 Rulemaking
B. Court Decisions; Remands
1. Michigan v. EPA ($NO_X$ SIP Call)
2. Appalachian Power v. EPA (Section 126 Rule)
3. Appalachian Power v. EPA (Technical Amendments)
II. New Documents
III. EPA's Response to Remands
A. Actual Heat Input; Reasons for State-by-State Fluctuations
B. Reasons for Calculated Approach
C. Growth Factor
D. Consistency of Use of Heat Input Growth Factors for Budget Purposes and for Cost Purposes
E. Utilities' Multi-State Operations
IV. Comments

## I. Background

### *A. Rulemakings*

#### 1. $NO_X$ SIP Call

In a final action published October 27, 1998, EPA promulgated, ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' 63 FR 57356 (the $NO_X$ SIP Call). This rulemaking was the culmination of a multi-year study—begun by a cooperative group of States, industry, and citizen groups called the Ozone Transport Assessment Group (OTAG)—of the causes and extent of ozone-smog transport in the eastern half of the United States. In the $NO_X$ SIP Call, EPA determined that $NO_X$ emissions from 22 States and the District of Columbia contributed significantly to ozone nonattainment problems downwind, under Clean Air Act (CAA) section 110(a)(2)(D). Accordingly, EPA promulgated a requirement that each of the 23 jurisdictions submit a SIP revision containing controls that would yield specified levels of $NO_X$ emissions reductions, and thereby eliminate that jurisdiction's significant contribution.

Under the rulemaking, the appropriate level of $NO_X$ reductions is the amount of $NO_X$ emissions that could be eliminated through use of highly cost-effective controls. In the $NO_X$ SIP Call, EPA did not require States specifically to impose controls on any particular sources, but rather EPA determined the amount of emissions reductions that would correspond to the implementation of highly cost-effective controls, and required States to submit SIP revisions that provide for that amount of reduction. Although EPA determined the amount of required reduction by examining several categories of sources, EPA based most of its required emissions reductions on the availability of highly cost-effective controls for large EGUs.

In studying EGU $NO_X$ emissions and associated issues, EPA relied heavily on a computerized simulation of the electric utility industry termed the Integrated Planning Model (IPM).[1] The IPM used by EPA covers 48 contiguous U.S. States and incorporates information over a multi-year period as to expected demand for electricity, the physical characteristics of electricity generators, transmission grids, characteristics of the fuels used, amounts of $NO_X$ and other pollutant emissions, types of emissions controls, and the various costs involved. Based on these inputs, the IPM provides reasonable projections, over a multi-year period, of, among other things, the amount of electricity generation that will be needed in various areas, which sources will generate how much electricity, to which region that electricity will be transmitted, what amounts of heat input will be needed, the amount of pollution that will be emitted, what pollution controls will be required on which sources, what costs will be incurred, and how much new generation capacity will be built in various regions.

For the $NO_X$ SIP Call, EPA conducted the IPM simulations for the years 2001 to 2020, inclusive. Further, EPA programmed the model to provide detailed data outputs for the years 2001, 2003, 2007, 2010, and 2015. Of particular relevance for present purposes, IPM provided projections for heat input for 2001 and 2010, as well as projected $NO_X$ emissions for 2007.

EPA determined the amount of reductions attributable to EGUs as highly cost effective in the following manner: For each of the 23 jurisdictions, EPA determined the amount of actual heat input used by all large EGUs in the jurisdiction during the 1995 and 1996 ozone seasons. EPA selected the higher of the 1995 or 1996 amounts as the baseline heat input. EPA then applied a growth factor to this baseline amount, to grow it from the 1996 level (which, for some States, included the 1995 amount) to a 2007 base level. EPA determined the growth factor by determining the average annual growth rate in heat input projected by IPM between the years 2001 and 2010 inclusive.

EPA then applied to the 2007 projected heat input, the control level that EPA determined to be highly cost effective. This calculation yielded an amount of $NO_X$ emissions, which may be referred to as the 2007 EGU Budget. EPA subtracted this amount from the amount of $NO_X$ emissions IPM had projected for 2007 without assuming $NO_X$ controls. The remainder constituted a portion of the amount of $NO_X$ emissions reductions—the portion attributable to EGUs—that each jurisdiction was required to achieve.

#### 2. Technical Amendments

When it promulgated the $NO_X$ SIP Call rule, EPA decided to reopen public comment on the source-specific data used to establish each State's 2007 EGU Budget (63 FR at 57427). EPA further extended this comment period by notice dated December 24, 1998 (63 FR 71220). EPA indicated that it would entertain requests to correct the 2007 EGU Budgets to take into account errors or updates in some of the underlying emissions inventory and certain other specified data (63 FR at 57427).

Following its review of the comments received, EPA published a rulemaking providing Technical Amendments to, among other things, the 2007 EGU Budgets. ''Final Rule; Technical Amendment to the Finding of Significant Contribution and Rulemaking for Certain States for Purposes of Reducing Regional Transport of Ozone,'' (64 FR 26298; May

[1] IPM and the manner in which EPA programmed it is discussed in ''Report on Analyzing Electric Power Generatin Under the CAAA,'' A–96–56, V–C–03 (March 1998).

14, 1999). In response to additional comments received, EPA published a second rulemaking, making additional Technical Amendments to the 2007 EGU Budgets. ''Final Rule; Technical Amendment to the Finding of Significant Contribution and Rulemaking for Certain States for Purposes of Reducing Regional Transport of Ozone,'' (65 FR 11222; March 2, 2000). (These two rulemakings may be referred to, together, as the Technical Amendments.) In promulgating the Technical Amendments, EPA kept intact its method for determining the 2007 EGU Budgets, including the method for determining growth to 2007. EPA simply made adjustments concerning whether particular sources were large EGUs, and made the appropriate adjustments in the 1996 baseline (which included 1995 heat input values for some States) for those sources.

3. Section 126 Rulemaking

In a final action published January 18, 2000, EPA granted petitions from four Northeast States making findings that $NO_X$ emissions from large EGUs, among other sources, in 12 Midwest, Southeast, and Northeast States and the District of Columbia contributed significantly to ozone nonattainment in the petitioning Northeast States. ''Findings of Significant contribution and Rulemaking on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport,'' 65 FR 2674 (Section 126 Rule). As a remedy, EPA promulgated control requirements for the EGUs. These control requirements were based on the 2007 EGU Budgets from the $NO_X$ SIP Call (as revised by the Technical Amendments). Specifically, EPA established a 2007 EGU Budget for each affected State, and then allocated the State's 2007 EGU Budget to each of the large EGUs in the State, according to a formula.

*B. Court Decisions; Remands*

All three sets of rulemakings—the $NO_X$ SIP Call, the Technical Amendments, and the Section 126 Rule—were challenged by various groups of States and industries in the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit).

1. Michigan v. EPA ($NO_X$ SIP Call)

On March 3, 2000, a panel of the D.C. Circuit largely upheld the $NO_X$ SIP Call in *Michigan* v. *EPA*, 213 F.3d 663 (D.C. Cir. 2000). Although partially vacating and remanding the SIP Call on certain specific issues, the Court generally upheld the regulatory approach adopted by EPA, including finding that EPA reasonably interpreted the CAA as ''providing it with the authority to determine a state's $NO_X$ significant contribution level,'' as reflected in each State's budget. *Id.* at 687. No party to that litigation specifically raised any issue concerning the EPA's method for computing the growth component for the EGU Budget.

2. Appalachian Power v. EPA (Section 126 Rule)

On May 15, 2001, a panel of the D.C. Circuit largely upheld the Section 126 Rule in *Appalachian Power v. EPA,* 249 F.3d 1032 (D.C. Cir. 2001). In response to a direct challenge by parties to EPA's method for determining EGU growth rates, the Court remanded that part of the rule to EPA.

At the outset, the Court turned aside a challenge by the Midwest and Southeast States that EPA's emissions growth projections were arbitrary and capricious because they relied on IPM growth projections that were significantly lower than certain individual state projections. The Court upheld ''EPA's judgment [that] the IPM offered a more comprehensive and consistent means of allocating emission allowances than sorting through the various state-specific projections.'' *Id.* at 1053.

However, the Court went on to remand EPA's EGU growth projections. The Court objected that EPA never articulated why it adopted its methodology for projecting growth. In addition, the Court noted information provided by the petitioners challenging the rule that—

> EPA's projections significantly underestimated growth rates in some States. In Michigan and West Virginia, for example, actual utilization in 1998 already exceeded the EPA's projected levels for 2007.

The Court stressed that ''future growth projections that implicitly assume a baseline of negative growth in electricity generation over the course of a decade appear arbitrary,'' and that EPA did not provide a record explanation of this disparity.[2]

The Court then observed that although EPA relied on IPM projections for the 2001–2010 period, EPA had admitted that it had IPM projections for 2007, as well as for the 1996–2001 period. The Court quoted statements in EPA's Response to Comments document indicating that EPA relied on the 2001–2010 IPM growth projections to grow emissions from 1996 and thereby determine the 2007 EGU budgets, but then relied on IPM growth projections for 1996–2001 and 2001–2010 to analyze the costs of complying with those budgets. The Court concluded that EPA failed to explain why it used two sets of growth rates for different purposes.[3] For these reasons, the Court remanded ''so that the agency may fulfill its obligation to engage in reasoned decisionmaking on how to set EGU growth factors and explain why results that appear arbitrary on their face are, in fact, reasonable determinations.'' *Id.* at 1053–55.

3. *Appalachian Power* v. *EPA* (Technical Amendments)

On June 8, 2001, a third panel of the D.C. Circuit decided challenges to the Technical Amendments. *Appalachian Power Company* v. *EPA*, 251 F.3d 1026 (D.C. Cir. 2001). Although largely upholding the Technical Amendments, the Court remanded the EGU growth rates. The Court recognized that it ''confronted nearly identical challenges to the EPA's use of growth factors to estimate baseline $NO_X$ emissions for 2007 in the section 126 litigation,'' and remanded for the same reasons. *Id.* at 1034–35.

**II. New Documents**

EPA is placing the information described below in the docket. This information is being placed in the $NO_X$ SIP Call rulemaking docket, A–96–46; and incorporated by reference into the Section 126 rulemaking docket, A–97–43, II–L–01.

1. 1995 through 2000 ozone season heat input values for EGUs, at the unit level, in the SIP Call Region. For units subject to the Acid Rain Program, these values were calculated based on hourly data reported to EPA for compliance with the Acid Rain Programs. For other units not subject to the Acid Rain Program, these values were based on monthly data reported to the Energy Information Administration (EIA). The 1995 and 1996 unit level data is the same data used during the SIP Call rulemaking. Most of the 1997 and 1998 data was placed in the docket as part of the Section 126 rulemaking, but data for some additional units for those years has been added. In addition, post-1998 data has been added. Docket no. A–96–56, XIV–C–01. Table 1 summarizes 1995–2000 ozone season heat input values for EGUs on a State-by-State.

BILLING CODE 6560–50–P

[2] EPA did observe that heat input may vary from year to year, but the Court found ''no plausible explanation for how interannual variation can explain utilization rates in 2007 substantially lower than those observed in 1998.''

[3] As described below, EPA's statements in the Response to Comments document that it relied on IPM growth proections for 1996–2001 were misleading.

**Table 1: Actual Heat Input, 1995-2000 (ozone season, total mmBtu)**

| State | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 |
|---|---|---|---|---|---|---|
| AL | 350,059,204 | 350,907,982 | 350,328,372 | 369,978,200 | 389,364,461 | 400,689,850 |
| CT | 48,093,524 | 61,678,648 | 64,381,511 | 56,591,808 | 75,967,544 | 61,324,920 |
| DC | 2,026,082 | 128,205 | 645,846 | 3,113,446 | 3,173,633 | 1,153,593 |
| DE | 42,077,856 | 45,204,267 | 39,315,387 | 45,932,682 | 39,394,171 | 35,185,752 |
| GA | 356,963,346 | 335,977,013 | 351,207,750 | 403,716,898 | 387,781,101 | 420,260,694 |
| IL | 347,985,300 | 379,029,184 | 406,127,886 | 450,929,580 | 418,420,171 | 436,052,570 |
| IN | 514,611,872 | 523,672,522 | 536,772,484 | 577,059,852 | 582,006,636 | 523,711,122 |
| KY | 410,472,859 | 414,304,687 | 406,480,534 | 431,861,492 | 455,747,249 | 426,732,829 |
| MA | 124,983,468 | 113,298,531 | 123,844,201 | 136,001,859 | 147,443,919 | 124,327,323 |
| MD | 143,395,098 | 136,794,146 | 146,128,637 | 182,217,612 | 183,980,736 | 148,950,008 |
| MI | 362,883,707 | 351,493,214 | 356,684,564 | 408,239,157 | 396,605,048 | 379,638,744 |
| MO | 283,776,902 | 276,038,736 | 298,106,042 | 314,731,878 | 335,273,139 | 332,332,587 |
| NC | 320,845,066 | 340,609,864 | 325,299,250 | 372,494,163 | 351,368,932 | 330,683,806 |
| NJ | 106,479,866 | 88,074,347 | 92,928,677 | 78,088,747 | 113,385,505 | 106,900,335 |
| NY | 374,784,148 | 286,550,572 | 291,440,062 | 360,671,489 | 408,149,310 | 347,004,497 |
| OH | 554,457,657 | 566,131,821 | 543,431,600 | 596,937,824 | 590,290,990 | 571,651,486 |
| PA | 527,611,362 | 566,917,544 | 534,849,419 | 578,757,472 | 478,728,990 | 502,320,833 |
| RI | 16,066,757 | 43,102,370 | 12,029,849 | 11,140,079 | 34,133,203 | 30,158,008 |
| SC | 136,790,135 | 156,359,804 | 148,194,438 | 175,584,043 | 186,256,000 | 187,329,450 |
| TN | 281,896,512 | 269,960,693 | 268,808,769 | 256,156,350 | 261,568,838 | 281,169,294 |
| VA | 154,233,310 | 172,633,028 | 155,669,990 | 195,693,832 | 226,235,721 | 215,558,939 |
| WV | 347,687,307 | 341,738,426 | 364,757,289 | 386,442,663 | 391,592,231 | 380,868,435 |
| TOTAL | 5,808,181,338 | 5,820,605,605 | 5,817,432,557 | 6,392,341,126 | 6,456,867,528 | 6,244,005,074 |

BILLING CODE 6560–50–C

2. Ozone season utility sales data for the years 1995—2000, as reported to EIA. Docket no. A–96–56, XIV–C–02.

3. Generation data for various sources for 1995–2000, as reported to EIA:

a. Generation data-utility ozone season fossil-fuel net generation. Docket no. A–96–56, XIV–C–03.

b. Generation data-utility ozone season hydroelectric net generation. Docket no. A–96–56, XIV–C–04.

c. Generation data-utility ozone season nuclear net generation. Docket no. A–96–56, XIV–C–05.

4. EIA State summaries of information related to electrical generation and use (1988, 1993, and 1998)

a. Historic annual power generation and sales. Docket no. A–96–56, XIV–C–06.

b. Historic fossil-fuel-fired generation and all generation. Docket no. A–96–56, XIV–C–15.

5. ''Power Companies Efforts to Comply with the $NO_X$ SIP Call and Section 126,'' NESCAUM (May 31, 2001). This document summarizes published reports regarding power companies' intentions to install selective catalytic reduction (SCR) to meet the requirements of the $NO_X$ SIP Call. Docket no. A–96–56, XIV–C–07.

6. Information as to the geographic location of units owned by particular utility companies. Docket no. A–96–56, XIV–C–08.

7. Information concerning effectiveness of SCR in achieving emissions reductions greater than 90 percent.

a. Press release from American Electric Power (AEP) announcing plans to install SCR at the John E. Amos Plant and the Mountaineer Plant (Jan. 29, 2000). Docket no. A–96–56, XIV–C–09.

b. Press release from AEP announcing plants to install SCR at the Big Sandy Plant (April 6, 2000). Docket no. A–96–56, XIV–C–10.

c. ''Commissioning Experience on the SCR Retrofit at Pennsylvania Power and Light's 775 MW Montour Station Unit 2, ''Tom Robinson, Babcock Borsig Power Inc., presented at 2001 Conference on Selective Catalytic Reduction and Non-Catalytic Reduction for $NO_X$ Control, May 16–18, 2001. Docket no. A–96–56, XIV–C–11.

d. ''First Year's Operating Experience with SCR on 600 MW PRB-Fired Boiler,'' Dave Harris, Black and Veatch, presented at 2001 Conference on Selective Catalytic Reduction and Non-Catalytic Reduction for $NO_X$ Control, May 16–18, 2001. Docket no. A–96–56, XIV–C–12.

8.a. ''Review of Potential Efficiency Improvements at Coal Fired Power Plants,'' April 17, 2000. Docket no. A–96–56, XIV–C–13.

b. ''Increasing Electricity Availability from Coal-Fired Generation in the Near Term,'' National Coal Council, May 2001. Docket no. A–96–56, XIV–C–14.

9. ''The Changing Structure of the Electric Power Industry—2000; An Update'', Energy Information Administration (October 2000). Docket no. A–96–56, XIV–C–16.

EPA may place additional documents in the docket, and if EPA does so, EPA will announce their availability by posting a notice on the *http://www.epa.gov/airmarkets/fed NOx/126noda/.* web site.

## III. EPA's Response to Remands

EPA is considering its response to all issues raised by the Court in its remand of the EGU growth issue. Our preliminary view, based on the record in the $NO_X$ SIP Call and Section 126 rulemakings, is that EPA's growth rate methodology was reasonable. As a result, we intend to provide a more robust rationale for that methodology, taking into account the concerns expressed by the Court. We are also examining additional data. Our preliminary review of that data indicates that they appear to confirm the reasonableness of the growth rate methodology. We invite comment on the new data.

As described above, to determine each State's 2007 EGU Budget, EPA began with each State's heat input, expressed in million Btu (per ozone season for large fossil-fuel-fired units), for 1995 and 1996, and chose the higher of those two amounts as the 1996 baseline for that State. EPA then computed a growth factor equal to the average annual increase in heat input predicted by IPM for that State from 2001 to 2010. EPA applied each State's growth factor to each State's baseline, to grow the baseline from 1996 to 2007. EPA then applied the emission rate of 0.15 pounds of $NO_X$ per million Btu to each State's predicted 2007 heat input. The result is each State's 2007 EGU Budget, expressed in tons of $NO_X$ emissions per ozone season.

As described above, the Court expressed several concerns with EPA's growth rate methodology. In particular, the Court was concerned that some States had higher levels of heat input in 1998 than EPA had projected for 2007. More broadly, the Court was concerned that EPA did not adequately explain why it used its method, rather than another method, including the direct use of IPM's projected 2007 heat input. The Court was also concerned with EPA's explanation of why the accuracy of its projections on a regional level offset possible inaccuracies in individual State projections. Finally, the Court was also troubled by EPA's apparent use of two different sets of growth rates for different purposes (the establishment of the budgets and the analysis of the costs of the control measures).

### *A. Actual Heat Input; Reasons for State-by-State Fluctuations*

To begin to address the Court's concerns that some States' actual heat input levels already exceed EPA's projections for 2007, we are examining available data concerning actual heat input for the affected States. These include the amounts of actual heat input for each state affected by the SIP Call and Section 126 rulemakings for the years 1995–2000. A summary table of these amounts is included in Table 1 above.

In the Section 126 Case, some litigants identified two States, Michigan and West Virginia, as having actual heat input in 1998 higher than EPA's 2007 projection, which led the Court to express concern about the accuracy of EPA's method of projecting growth. We note, however, that both States had actual heat input in 2000 that was more consistent with what EPA projected for the year 2007. Michigan's 2000 heat input was substantially lower than its heat input in 1998 as well as the 2007 projection. West Virginia's heat input for 2000 was also lower than in 1998 or 1999. This indicates that there can be considerable variability in the year-by-year heat input amounts for individual States.

Indeed, a review of the State-by-state heat input amounts for the years 1995 to 2000 in Table 1 does indicate that many States experienced substantial fluctuations on a year-by-year basis as well as sharply differing multi-year patterns from each other. To return to Michigan, that State's heat input fell between 1995 to 1997, rose substantially in 1998, and fell again during 1999 and 2000. Indiana's heat input rose steadily from 1995 to 1999, but in 2000, fell to 1996 levels. New Jersey's pattern was almost the opposite of Indiana's.

Many factors may combine to cause heat input amounts for any particular State for any particular year to vary widely over a short-term period. These factors include, among others,

- Forced outages (generating units may be required to shut down for unexpected reasons, which would shift heat input to another State);
- Variations in energy costs (*e.g.,* a drop in natural gas prices may attract generation to natural gas fired units in

one State and away from coal fired units in another State);

- The implementation of environmental controls by the sources in one State (which may shift heat input to another State);
- The start-up of new units that are more efficient (and thereby take up more generation and reduce overall heat input);
- Electricity transmission problems (which may require a State that imports electricity to do so from a different geographic area, which may, in turn, result in heat input shifts);
- Weather patterns;
- Economic variability (industry in one region may experience a boom and require more electricity);
- Variations in availability of non-fossil-fuel-fired units, including nuclear or hydropower.

It should be noted that fossil fuel heat input growth and decreases do not directly correlate to growth and decreases in electricity generation.[4] Indeed, from 1998–2000, electricity generation in the SIP Call area increased, but heat input decreased. These results seem to be attributable in part to some of the factors noted above, including the greater efficiency in 2000 of some units, and greater reliance in 2000 on nuclear or other non-fossil-fuel fired units. Short-term swings in fuel costs and electricity demand (either of which could be related to the weather, among many other factors) could also result in significant year-by-year, and State-by-state, variations in heat input. To further analyze the difference between heat input and electricity generation, EPA is reviewing electrical generation and electrical sales data compiled by EIA.

It should be emphasized that EPA's method for projecting heat input for the year 2007 was not designed to predict accurately heat input on a state-by-state basis for years before 2001. This is because some of the assumptions built into the IPM model for the later years in the 2001–2010 period may differ from what exists in the pre-2001 period. For example, in 1998, utility boilers subject to Phase II of Title IV of the Clean Air Act (the Acid Rain Program), were not constrained by any emission limitations under the Acid Rain Program. By 2007, these units will be subject to both $SO_2$ and $NO_X$ limitations. These limits are likely to increase operating costs. As a result, the state-by-state pattern of heat input projected by the IPM model once these limits are in place would differ from the pattern of heat input that would occur during the pre-2001 period.

In particular, the different schedules for implementation of $NO_X$ emission controls required by individual States appear to have been a factor contributing to the significant fluctuations in heat input levels seen during the 1998–2000 period. During these years, EGUs in the Northeast States were implementing controls at levels that generally are more stringent than those required in the rest of the SIP Call region. For the most part, sources in the Midwest and Southeast were not yet implementing the Section 126 Rule-level controls. In some instances, sources in these three regions compete against each in the same transmission grids. This difference in timing of control costs could be expected to give EGUs in the Midwest and Southeast a competitive advantage over their Northeast counterparts, which would constitute one factor leading towards higher heat input levels in those States, and lower levels in the Northeast, during this time. Implementation by the Midwest and Southeast utilities of the section 126 or $NO_X$ SIP Call controls in the coming years would be a factor leading towards lower heat input in those States, and higher heat input in the Northeast States.

Although these differences in control assumptions would lead to different patterns of heat input on a state-by-state basis in 2000 than in 2007, they would not have as significant an impact on regionwide heat input. For this reason, EPA continues to believe that regionwide heat input figures are a better measure of the accuracy of EPA's methodology for growth calculations than state-by-state figures.

Most importantly, we note that if our method were applied to the year 2000, that is, if our growth factor were applied to grow the 1996 baseline out to 2000, our prediction of regionwide heat input would be 6,250,350,677 mmBtu. Compared to the actual heat input of 6,228,694,532 mmBtu, our projection differed by less than 0.5 percent. EPA fully realizes that regionwide heat input may vary significantly year-to-year due to various factors that are difficult to predict. For example, regionwide heat input was higher in 1998 and 1999 than in 2000, a phenomenon that we believe may have been due in part to unseasonably hot summer weather in 1998 and 1999 in significant portions of the $NO_X$ SIP Call region, strong economic conditions, and the temporary shut-down of large non-fossil-fuel powered generation resources such as the Cook Nuclear Power Plant in Michigan. Even so, we believe that the match-up of the 2000 actual heat input figure and the figure that our growth rate would have projected does suggest that our method is within the range of reasonable accuracy.

*B. Reasons for Calculated Approach*

Our method constitutes a calculated method, which relies on both a baseline amount and a growth factor. EPA selected this approach, instead of others, such as directly using IPM's projected 2007 heat input, for several reasons. In particular, the baseline component of this method offers several advantages. First, because EPA chose for the baseline actual heat input for the 1995 or 1996 year, the baseline is reality based. As a result, this baseline necessarily gives the EPA method a more accurate beginning point than any model could provide.

Moreover, using a calculation method with a baseline based on actual heat input in a given year created the opportunity to mitigate a significant problem inherent in heat projection methodology: large, year-to-year swings in projected heat input on an individual state basis. That is, the amount of heat input for any given year could fluctuate widely from the year before or the year after due to an unusual confluence of factors. This phenomenon gives rise to risk that in 2007, an individual State might have an unusually high heat input. Mindful of this risk, EPA, in selecting the baseline for each State, selected the higher of 1995 or 1996 actual heat input. By giving States an artificially higher baseline, the EPA method allowed a cushion to protect States and sources against undue fluctuations in heat input.

Finally, the EPA method readily allowed for updates of the baseline when revised or more detailed information for individual sources became available during the rulemaking. At the outset of the rulemaking process for the $NO_X$ SIP Call, EPA gathered the most accurate information available concerning the heat input of EGUs as of 1995. However, EPA was aware that this information would be subject to updating and refinement. Indeed, States and sources provided EPA with a steady stream of revisions to this baseline data, which resulted in the publication of a supplemental notice of proposed rulemaking for the SIP Call, extensions of the comment periods, and two rulemakings providing Technical Amendments. EPA found it much more practical to accommodate these updates by periodically updating the baseline

[4] In the Section 126 Case, the Court noted that EPA's method implicitly assumed negative growth in ''electricity generation'' over the course of a decade. The Court appears to have confused electricity generation with heat input. 249 F.3d at 1053.

number (and thereby moving it up or down) and arithmetically recomputing the 2007 EGU budget for the State, rather than to input revised data into the IPM and re-run the model, which would be expensive and time-consuming.

*C. Growth Factor*

To the baseline, EPA applied a growth factor based on IPM projections for heat input from 2001 to 2010. Specifically, as noted above, for each State, EPA divided the heat input projected for the year 2010 by the heat input for the year 2001. EPA then arithmetically converted this 9-year growth factor to an 11-year growth factor, and used it to grow the 1996 baseline (including, if higher, the 1995 heat input) to 2007.

At the outset, it should be noted that EPA considered a growth rate based entirely on modeled projections for both beginning point (in this case, 2001) and end point (in this case, 2010) to be the most accurate method possible. EPA chose not to develop a growth rate based on a State's actual 1996 baseline heat input as the beginning point and a modeled heat input projection (for example, the IPM projection for 2007 heat input) as the end point. The reason is simply that either method would need to rely on the modeled endpoint; and the modeled endpoint would necessarily include some degree of systemic inaccuracy due to the need to make simplifying assumptions in a model that may vary from the real world, or due to unavoidable inaccuracies of the model. EPA believed that these limitations may be mitigated to some extent if both a modeled beginning point and end point were used. On the other hand, if an actual beginning point and a modeled end point are used, the limitations of the model could be exaggerated.

For example, in many cases, EPA depended on information from various sources concerning the electricity generating capacity of the EGUs. If the information provided to EPA concerning a particular source were incorrectly high, IPM would project incorrectly higher electricity generation from the EGU, which, in turn, would lead IPM to project incorrectly high heat input for the State in which the EGU is located. With a modeled beginning point (2001 heat input projection) and end point (2010 heat input projection), the effect of this error would, as a matter of arithmetic, be minimized. By comparison, with an actual beginning point (*e.g.,* a 1996 actual baseline), the incorrectly higher heat input in the modeled endpoint would be a factor tending towards greater inaccuracy.

In understanding why EPA selected the years 2001 to 2010, it is important to recognize that in promulgating the $NO_X$ SIP Call, EPA programmed IPM to project heat input and other output for certain years between 2000 and 2021, but not for any years prior to 2001.[5] IPM's projections, which included heat input, $NO_X$ emissions, control costs, and other outputs, were important for regulatory purposes in and after the year 2001, but not before. To have generated outputs, such as heat input, for years prior to 2001 would have required a large number of inputs for those years, such as availabilities of various types of generation units (fossil-fuel fired, nuclear, hydropower, or renewable), fuel costs, costs to build new units, and performance characteristics of new units. Developing those inputs for the earlier years would have been costly. Furthermore, increasing the length of the model's projection period increases the complexity of the programming for the model. To run the model, EPA must make certain simplifying assumptions (such as combining units, as noted above). Adding run years may have required making more simplifying assumptions, such as the number of control options available to plants. More simplifying assumptions would reduce the accuracy of the modeled projections. EPA did not believe that reprogramming the model to calculate heat input for earlier years was worth these tradeoffs. Accordingly, EPA programmed IPM to provide outputs for only during and after 2001.

In selecting the post-2000 period upon which to rely for the growth factor, EPA decided to rely on the 2001 to 2010 period, instead of, for example, the 2001 to 2007 period. Cognizant that its task was to project average annual growth over an 11-year period, from 1996 to 2007, EPA believed that relying on a projection over a 9-year period, 2001–2010, was a reasonably accurate way to do so. The nine-year period for projecting growth seemed to be a reasonably close approximation to the 11-year period, 1996–2007, for which the growth projection was required. Although relying on the 2001–2007 period would have had the advantage of leaving the end-point of the projection period (2007) the same as the year for which the projection was being made, this shorter, six-year period would have been further afield from the 11-year period for which the growth projection was required.

*D. Consistency of Use of Heat Input Growth Factors for Budget Purposes and for Cost Purposes*

In the Section 126 Case, the Court expressed concern that EPA had used the EPA Growth Method to determine 2007 levels of heat input for purposes of establishing State budgets, but EPA had relied on IPM projections for 2007 heat input for purposes of developing EPA's cost estimates. The Court based this view on statements EPA made in the Response to Comments document, noted above. The Court concluded that EPA offered no cogent explanation for using different sets of growth rates for different purposes. 249 F.3d at 1054.

EPA's statements in the Response to Comment document are discussed above, and EPA acknowledges that those statements are ambiguous and confusing. In fact, however, EPA did not use IPM 2007 heat input projections as an input for purposes of determining cost estimates. Rather, EPA relied on its own projections for 2007 heat input for calculating the budget, and then used IPM to test the cost effectiveness of that budget. The following summarizes EPA's procedure.[6]

First, EPA computed its projection for each State's 2007 heat input, using the EPA Growth Method. Then, to determine the emission rate that was highly cost effective and, at the same time, to determine the costs of that emission rate, EPA applied, one at a time, different emissions rate limits to each State's 2007 heat input. For example, EPA applied the emission rates of 0.12 lbs/mmBtu (that is, 0.12 pounds of $NO_X$ emitted per million British thermal units), 0.15 lbs/mmBtu, 0.2 lbs/mmBtu, and others. Application of each emission rate yielded, for each State, a different amount of emissions (the ''2007 Control Case Emissions''). EPA added the 2007 Control Case Emissions for each State for each emission rate applied, which resulted in amounts of regionwide $NO_X$ emissions that varied with the different emission rates applied. Thus, EPA determined the amount of regionwide $NO_X$ emissions that would result from a 0.12 lbs/mmBtu emission rate, the amount of regionwide $NO_X$ emissions that would result from a 0.15 lbs/mmBtu emission

[5] EPA stated in a Response to Comments document that it had relied on IPM ''growth rates'' for 1996–2001 for purposes of determining cost effectiveness. Upon further review, EPA realizes that those statements were ambiguous and confusing. ''Responses to Significant Comments on the Proposed Findings of Significant Contribution and Rulemaking on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport,'' A–97–43, VI–C–01, at 112–13. EPA intended to refer to IPM projections for growth in demand for electricity, not growth in heat input.

[6] EPA discussed its procedure in the proposal for the $NO_X$ SIP Call rulemaking, 62 FR 60318, 60350–60353 (November 7, 1997).

rate, and so on. EPA input into IPM the amount of regionwide $NO_X$ emissions that corresponded to each emission rate-which amounted to a constraint on $NO_X$ emissions—and then EPA ran IPM for each amount of the regionwide $NO_X$ emissions constraint. This determined the cost of generating electricity with the constraint of the regionwide $NO_X$ emissions level being tested. Then, EPA subtracted that cost from the cost of generating electricity in 2007 that IPM projected without any $NO_X$ emissions constraints. In this manner, EPA was able to compute a cost figure for the controls necessary to assure that regionwide, no more than the specified amount of $NO_X$ would be emitted. EPA compared the cost figures for each of the IPM runs, and selected the figure that EPA considered to be highly cost effective. This figure was the emission rate of 0.15 lbs/mmBtu. EPA assigned to each State an EGU budget based on the same methodology—the use of an 0.15 lbs/mmBtu emission rate and the EPA 2007 growth projection for heat input. Thus, EPA used the same determination of each State's 2007 heat input for the purpose of determining both costs and each State's budget.

*E. Utilities' Multi-State Operations*

EPA is aware that many utilities have operating units in several States that are linked to the same transmission grid. As a result, utilities are able to alter dispatches from one unit to another, and thereby minimize costs while maintaining the same level of electricity generation. According to the Energy Information Administration (EIA), ''By the end of 2000, the number of electric holding companies will decrease to 53 and the generation capacity they own will increase to about 86 percent of the total investor owned utility capacity, primarily because of mergers and acquisitions. This statistic suggests that relatively large companies are becoming even larger.'' *The Changing Structure of the Electric Power Industry—2000; An Update,* EIA (October 2000). http://www.eia.doe.gov/cneaf/electricity/chg_stru_update/update2000.pdf p. 91. This statement indicates that an increasing amount of the generation capacity is owned by companies with multistate operations. EPA's preliminary review indicates that over 60 percent of the capacity in the SIP Call Region is owned by companies that operate generating units in two or more States. The American Electric Power Company, for example, owns units in numerous States, including six in the SIP Call region. The fact that many utilities operate units in different States appears to soften the adverse impact if EPA's projected heat input for 2007 for individual States are not completely accurate.

## IV. Comments

EPA is soliciting comments on the new data placed in the docket and set out in Table 1 above. EPA asks that commenters provide us with their comments by September 4, 2001. EPA intends to complete its response to the Court's remands by or about mid-November, 2001.

The EPA is not soliciting comment on IPM itself or on state-specific approaches for determining 2007 heat input levels. EPA understands the Court's opinion to have held as reasonable EPA's reliance on IPM as a regionally uniform methodology for determining each States 2007 EGU Budget. In addition, EPA is reviewing the actual heat input data in Table 1 solely in the context of the growth rate issue, and EPA is not re-opening any issues related to allowances allocated under the Section 126 Rule or the amount of the 1996 baseline determined under the $NO_X$ SIP Call Rule.

Dated: July 27, 2001.

**John Seitz,**

*Director, Office of Air Quality Planning and Standards.*

[FR Doc. 01–19550 Filed 8–2–01; 8:45 am]

BILLING CODE 6560–50–P

---

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[OR 62–7277a, OR 71–7286a, OR 01–001a; FRL–7017–9A]**

## Approval and Promulgation of Implementation Plans: Oregon

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) approves parts of various revisions to the Lane Regional Air Pollution Authority (LRAPA) portion of Oregon's State Implementation Plan (SIP). LRAPA, through the Oregon Department of Environmental Quality (ODEQ), forwarded three submittals to EPA for inclusion into the Oregon SIP on December 12, 1996, August 26, 1998, and February 23, 2001.

EPA is approving revisions to LRAPA's Definitions (Title 12), Incinerator Regulations (Title 30), Emission Standards (Title 32), Prohibited Practices and Control of Special Classes (Title 33), and Stationary Source Rules and Permitting Procedures (Title 34). These revisions were submitted in accordance with the requirements of section 110 of the Clean Air Act.

**DATES:** This direct final rule will be effective October 2, 2001, unless EPA receives adverse comment by September 4, 2001. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Written comments should be addressed to: Debra Suzuki, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Copies of material submitted to EPA and other information supporting this action may be examined during normal business hours at the following locations: EPA, Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, Oregon Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204–1390, and the Lane Regional Air Pollution Authority, 1010 Main Street, Springfield, Oregon 97477.

**FOR FURTHER INFORMATION CONTACT:** Debra Suzuki, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–0985.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever ''we,'' ''us,'' or ''our'' are used we mean EPA.

## I. Overview

The Lane Regional Air Pollution Authority (LRAPA) was created in 1968 to achieve and maintain clean air in Lane County, Oregon. Its member entities include Lane County and the cities of Eugene, Springfield, Cottage Grove, and Oakridge. LRAPA, through Oregon Department of Environmental Quality (ODEQ), forwarded three submittals to EPA for inclusion into the Oregon SIP on December 12, 1996, August 26, 1998, and February 23, 2001. For a summary of the rules EPA is approving, please see the table below. The submitted SIP revisions improve the clarity, effectiveness, and enforceability of LRAPA's rules by updating the rules, by creating consistency between LRAPA and ODEQ rules, and by making organizational and editorial changes. This **Federal Register**

action will update the SIP to better match LRAPA's current local rules.

The SIP provides for the implementation, maintenance, and enforcement of the National Ambient Air Quality Standards, which are set for criteria pollutants. The six criteria pollutants are: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. We will take no action to either approve or disapprove those portions of the rules relating to the control of non-criteria pollutants. EPA also will take no action on any sections that only direct the reader to another section and do not contain any rules.

**A. Summary Table of LRAPA SIP Revisions EPA is Approving**

| Date of submittal to EPA | Items revised |
|---|---|
| 12/12/96 | —Emission Standards (Title 32)<br>—Prohibited Practices and Control of Special Classes (Title 33) |
| 8/26/98 | —Definitions (Title 12)<br>—Incinerator Regulations (Title 30)<br>—Repeal of the old Incinerator Regulations (33–020) |
| 2/23/01 | —Stationary Source Rules and Permitting Procedures (Title 34) |

*B. What Are the Significant Changes to the SIP?*

Title 12—Definitions

The definitions used by LRAPA are consolidated under Title 12. Please see the Technical Support Document that this **Federal Register** action relies upon for a list of the definitions that are revised or added to Title 12. Title 12 contains some definitions related to New Source Review. Title 38 contains the New Source Review rules and definitions, and has also been revised and submitted to us for review (LRAPA effective date of May 11, 1993). We are not taking action on Title 38 at this time. Thus, we are approving the revisions to Title 12, with the caveat that the Title 38 definitions in the previously approved SIP (LRAPA effective date of February 13, 1990) remain the effective definitions for New Source Review.

Currently, there are two provisions identified as ''Title 12'' in the SIP. The first provision identified as Title 12 is the definitional section discussed above, while the second provision is ''General Duties and Powers of Board and Director.'' We are removing Title 12, General Duties and Powers of Board and Director, from the SIP. We reviewed the General Duties and Powers of Board and Director and found that the rule contains adequate investigative authority. However, rules describing agency investigative authority are not appropriate for inclusion in the SIP because of the potential conflict with EPA's independent authorities. We are also repealing Title 14, Definitions (LRAPA effective date of July 12, 1988), because it mistakenly was not removed from the SIP when Title 14 was recodified as Title 12 in 1990.

Title 15—Enforcement Procedure and Civil Penalties

Title 15 was submitted to EPA on August 26, 1998. We reviewed Title 15, and found the rule to provide adequate enforcement authority. However, rules describing agency enforcement authority are not approved into the SIP to avoid potential conflict with EPA's independent authorities. Therefore, we will not approve this version of Title 15 into the SIP, and we are removing the 1990 version currently in the SIP.

Title 30—Incinerator Regulations

This new title replaces LRAPA's previous SIP-approved incinerator rule (Section 33–020), which was adopted in 1973. These new rules better address modern incineration equipment and control and include emission limits and design, operation, monitoring, reporting, and testing requirements.

Title 30 applies to solid waste incinerators, crematoriums, and infectious waste incinerators, but not to municipal waste combustors. The rules affect five crematoriums and one infectious waste incinerator in the Eugene-Springfield area. Presently, there are no general refuse solid waste incinerators operating in Lane County. Previously, Section 33–020 applied to all incinerator categories, but exempting municipal waste combustors in Title 30 does not relax the requirements for any existing sources, because there are no municipal waste combustors in Lane County.

We are approving Title 30, with the exception of the provisions applying specifically to Hydrogen chloride (HCl), Dixons and Furans, and Odors (all non-criteria pollutants).

Title 32—Emission Standards

Title 32, as revised by LRAPA in 1994, was submitted to EPA for approval in 1996. Title 32 consolidates all emission standards into one title to ease the implementation of the Federal operating permit program. Revisions include updating the sulfur dioxide ($SO_2$) emission limitations, revising the Highest and Best Practicable Treatment and Control Required section, and adding Pollution Prevention guidelines, Operating and Maintenance requirements, and Typically Achievable Control Technology (TACT) requirements.

In Section 32–010, an opacity exception for incinerators is removed and replaced by the new incinerator rule discussed above (Section 30–020(6)). In Section 32–070, the 1000 ppm $SO_2$ limit is removed and replaced by the combination of the following more restrictive rules: (a) Section 32–065, Sulfur Content of Fuels; (b) Section 32–070, Sulfur Dioxide Emission Limits; and (c) Section 33–070(3)(C), Kraft Pulp Mills. All $SO_2$ emissions from stationary sources within LRAPA's jurisdiction are from fossil fuel combustion or pulp mill operation, and therefore are regulated by at least one of the three rules.

When Title 32 was revised in 1994, LRAPA removed the Airborne Particulate Matter section (32–060), dated September 14, 1982, and replaced it with Title 48, Fugitive Emissions. LRAPA also recodified Air Conveying Systems from Section 32–800 to 32–060. Since Title 48 has not been submitted to us at this time, we are keeping the previously approved Airborne Particulate Matter Section (32–060) in the SIP. Therefore, because of the recodification, there will be two sections numbered 32–060 in the SIP, Airborne Particulate Matter (1982) and Air Conveying Systems (1994).

This action approves the revisions to Title 32, with the exception of Section 32–075 (Federal Acid Rain Regulations Adopted by Reference) and Section 32–080 (Control of Ozone-Depleting Chemicals). Acid rain regulations are already federally enforceable (40 CFR part 72) and therefore, do not need to be made so through approval into the SIP. Ozone-depleting chemicals are non-criteria pollutants and inappropriate for inclusion in the SIP.

Title 33—Prohibited Practices and Control of Special Classes

The revisions to Title 33 update industry standards, move veneer dryers from Section 32–010 to Section 33–060, Board Products Industry Rules, add particulate emission limitations for wood-fired veneer dryers, and adopt Hot Mix Asphalt Plant Rules. The SIP revision also removes the previously approved Section 33–025 (Wigwam Waste Burners) because there are no longer any wigwam waste burners operating within LRAPA's jurisdiction.

We are approving the revisions to Title 33, with the exception of the parts of Section 33–070 (Kraft Pulp Mills)

concerning Total Reduced Sulfur (TRS), and all of Section 33–080 (Reduction of Animal Matter) because control of TRS and of odors from the reduction of animal matter are not appropriate for inclusion in the SIP. The sub-sections of Section 33–070 concerning TRS are as follows: 1(Definitions for Non-Condensibles, Other Sources, and Total Reduced Sulfur (TRS)), 3(A), 6(B), 7(A), 7(B), 8(C)(1)(a), and 8(C)(2)(a).

Title 34—Stationary Source Rules and Permitting Procedures and Permit Fees

Over the past several years, we have received many versions of Title 34 that we have not acted on. In this action, we are only acting on the most recent version, which was submitted on February 23, 2001, since it supersedes the previous submissions. The name of Title 34 has been changed from ''Air Contaminant Discharge Permits'' (ACDPs) to ''Stationary Source Rules and Permitting Procedures'' to reflect the consolidation of all permitting rules, including source registration, Plant Site Emission Limits (PSELs), ACDPs, Federal Operating Permits, and Synthetic Minor Sources, into one title. The rules have been updated to identify which permitting procedures a source may be subject to, outdated mandatory registration requirements have been removed, and references have been updated. Section 34–130 adds a provision for industrial sources to continue operating under an expired permit if, due to processing delays, LRAPA fails to issue a new permit in a timely fashion.

Source categories were added to the permit fee table (Table A) to make LRAPA rules consistent with ODEQ rules. Fees were adjusted (some categories were increased, others decreased) to better represent the permit processing time for individual categories. Section 34–150(13) is added to provide for an automatic annual increase of four percent in permit fees to keep up with inflation and maintain LRAPA's level of service in permitting. Therefore, the 2000 version of Table A that we are approving into the SIP will be the baseline from which future permit fees will be calculated.

We are approving the revisions to Title 34 into the SIP, with the exception of the rules for Federal Operating Permits (Sections 34–170 to 34–200) and Plant Site Emission Limits for Sources of Hazardous Air Pollutants (34–060(6)). Federal Operating Permit (Title V) programs and rules are enforceable by EPA through the Title V approval process (60 FR 50106, September 28, 1995), which is independent of the SIP approval process. Rules for the control of Hazardous Air Pollutants are not appropriate for the SIP. We are also taking no action on Section 34–035, Requirements for Construction (or Non-Major Modification), at this time.

EPA is taking no action on certain provisions relating to the trading of emissions, specifically Section 34–060(8) ''Alternative Emission Controls (Bubble).'' These provisions, which provide LRAPA with the authority to approve certain emission trades, do not need to be included in the SIP. The LRAPA bubble rule is consistent with the general requirements of EPA's Final Emission Policy Statement (December 1986), but does not comply with EPA's requirements for ''generic'' bubble rules. As such, each bubble approved by LRAPA must be submitted to, and approved by, EPA before the applicable requirements of the SIP are changed. Because of this requirement for a case-by-case SIP revision, it is inappropriate for EPA to approve LRAPA's rule into the SIP.

Title 47—Rules for Open Outdoor Burning

We are taking no action on Title 47 at this time.

## II. Summary of Action

We approve the following SIP revisions and deletions submitted by LRAPA, through ODEQ, for inclusion in the Oregon SIP. This summary also lists the revisions on which EPA is taking no action. A revised Table of Contents for the LRAPA portion of the Oregon SIP appears at the end of this action.

### *A. The Revisions EPA Is Approving Into the SIP*

Title 12, Definitions, effective 3–8–94.

Title 30, Incinerator Regulations, effective 3–8–94, except for Section 30–020(2), Section 30–020(8), Section 30–025(9), Section 30–030(1)(I), Section 30–030(2)(E), and Section 30–045(3).

Title 32, Emission Standards, effective 11–10–94, except for Section 32–075, Section 32–080, Section 32–095, Section 32–100, Section 32–101, Section 32–102, Section 32–103, and Section 32–104.

Title 33, Prohibited Practices and Control of Special Classes of Industry, effective 11–10–94, except for Section 33–005, Section 33–020, Section 33–055, Section 33–070(1)(Definitions for Non-Condensibles, Other Sources, and Total Reduced Sulfur (TRS)), Section 33–070(3)(A), Section 33–070(6)(B), Section 33–070(7)(A), Section 33–070(7)(B), Section 33–070(8)(C)(1)(a), Section 33–070(8)(C)(2)(a), Section 33–080, and Section 33–085.

Title 34, Stationary Source Rules and Permitting Procedures, effective 6–13–00, except for Section 34–025, Section 34–035, Section 34–060 (6), Section 34–060 (8), Section 34–080, Section 34–160, Section 34–170, Section 34–180, Section 34–190, Section 34–200, Section 34–210, Section 34–220, and Section 34–230.

### *B. The Revisions EPA Is Taking No Action On*

The following sections of Title 30, Incinerator Regulations, effective 3–8–94: Section 30–020(2), Section 30–020(8), Section 30–025(9), Section 30–030(1)(I), Section 30–030(2)(E), and Section 30–045(3).

The following sections of Title 32, Emission Standards, effective 11–10–94: Section 32–075, Section 32–080, Section 32–095, Section 32–100, Section 32–101, Section 32–102, Section 32–103, and Section 32–104.

The following sections of Title 33, Prohibited Practices and Control of Special Classes of Industry, effective 11–10–94: Section 33–005, Section 33–020, Section 33–055, Section 33–070(1)(Definitions for Non-Condensibles, Other Sources, and Total Reduced Sulfur (TRS)), Section 33–070(3)(A), Section 33–070(6)(B), Section 33–070(7)(A), Section 33–070(7)(B), Section 33–070(8)(C)(1)(a), Section 33–070(8)(C)(2)(a), Section 33–080, and Section 33–085.

The following sections of Title 34, Stationary Source Rules and Permitting Procedures, effective 6–13–00: Section 34–025, Section 34–035, Section 34–060(6), Section 34–060(8), Section 34–080, Section 34–160, Section 34–170, Section 34–180, Section 34–190, Section 34–200, Section 34–210, Section 34–220, and Section 34–230.

Title 47, Rules for Open Outdoor Burning, effective 10–17–95.

### *C. The Provisions EPA Is Removing From the SIP*

The following sections of Title 12, General Duties and Powers of Board and Director, effective 11–8–83: Section 12–005, Section 12–010, Section 12–020, and Section 12–035.

The following section of Title 12, General Duties and Powers of Board and Director, effective 9–9–88: Section 12–025.

Title 12, Definitions, effective 2–13–90.

Title 14, Definitions, effective 7–12–88.

Title 15, Enforcement Procedure and Civil Penalties, effective 2–13–90.

The following sections of Title 32, Emission Standards, effective 9–14–82: Section 32–005, Section 32–010, Section

32–025, Section 32–030, Section 32–035, Section 32–040, Section 32–045, Section 32–055, Section 32–065, Section 32–100, Section 32–101, Section 32–102, and Section 32–103.

The following section of Title 32, Emission Standards, effective 1–8–85: Section 32–800.

The following sections of Title 32, Emission Standards, effective 11–8–83: Section 32–104 and Section 32–990.

The following sections of Title 33, Prohibited Practices and Control of Special Classes of Industry, effective 5–15–79: Section 33–020, Section 33–025, Section 33–030, Section 33–045, Section 33–055, Section 33–060, and Section 33–065.

The following section of Title 33, Prohibited Practices and Control of Special Classes of Industry, effective 9–14–82: Section 33–070.

The following sections of Title 34, Stationary Source Rules and Permitting Procedures, effective 1–9–90: Section 34–001, Section 34–010, Section 34–015, Section 34–020, Section 34–025, Section 34–030, Section 34–035, Section 34–040, Section 34–045, Section 34–050, and Table A.

The following section of Title 34, Stationary Source Rules and Permitting Procedures, effective 2–13–90: Section 34–005.

EPA is publishing this rule without prior proposal because the Agency believes this is a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective October 2, 2001 without further notice unless the Agency receives adverse comments by September 4, 2001.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. There will not be a second comment period; therefore, any party interested in commenting should do so at this time. If no such comments are received, this rule will be effective on October 2, 2001, and no further action will be taken on the proposed rule.

## III. Administrative Requirements

A. Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2). This rule will be effective October 2, 2001, unless EPA receives adverse written comments by September 4, 2001.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 2, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

*B. Oregon Notice Provision*

During EPA's review of a SIP revision involving Oregon's statutory authority, a problem was detected which affected the enforceability of point source permit limitations. EPA determined that, because the five-day advance notice provision required by ORS 468.126(1) (1991) bars civil penalties from being imposed for certain permit violations, ORS 468 fails to provide the adequate

enforcement authority that a state must demonstrate to obtain SIP approval, as specified in section 110 of the Clean Air Act and 40 CFR 51.230. Accordingly, the requirement to provide such notice would preclude federal approval of a section 110 SIP revision.

To correct the problem the Governor of Oregon signed into law new legislation amending ORS 468.126 on September 3, 1993. This amendment added paragraph ORS 468.126(2)(e) which provides that the five-day advance notice required by ORS 468.126(1) does not apply if the notice requirement will disqualify a state program from federal approval or delegation. ODEQ has agreed that, because federal statutory requirements preclude the use of the five-day advance notice provision, no advance notice will be required for violations of SIP requirements contained in permits. Thus the advance notice provision in the LRAPA rule, section 15–018, does not apply for SIP requirements contained in permits.

*C. Oregon Audit Privilege and Immunity Law*

Another enforcement issue concerns Oregon's audit privilege and immunity law. Nothing in this action should be construed as making any determination or expressing any position regarding Oregon's Audit Privilege Act, ORS 468.963 enacted in 1993, or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act Program resulting from the effect of Oregon's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211, or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

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

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Note:** Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: July 13, 2001.

**Ronald A. Kreizenbeck,**

*Acting Regional Administrator, Region 10.*

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

## PART 52—[AMENDED]

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

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

## Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c) (134) to read as follows:

### § 52.1970 Identification of plan.

* * * * *

(c) * * *

(134) On December 12, 1996, the Director of the Oregon Department of Environmental Quality (ODEQ) submitted revisions to Lane Regional Air Pollution Authority (LRAPA) Title 32 and Title 33, as effective on November 20, 1994. On August 26, 1998, the Director of ODEQ submitted revisions to LRAPA Title 12, Title 30, and Title 33, as effective on March 8, 1994. On February 23, 2001, the Director of ODEQ submitted revisions to LRAPA Title 34, as effective June 13, 2000.

(i) Incorporation by reference.

(A) Title 12, as effective March 8, 1994; Title 30, as effective March 8, 1994, except for Section 30–020(2), Section 30–020(8), Section 30–025(9), Section 30–030(1)(I), Section 30–030(2)(E), and Section 30–045(3); Title 32, as effective November 10, 1994, except for Section 32–075, Section 32–080, Section 32–095, Section 32–100, Section 32–101, Section 32–102, Section 32–103, and Section 32–104; Title 33, as effective November 10, 1994, except for Section 33–005, Section 33–020, Section 33–055, Section 33–070(1)(Definitions for Non-Condensibles, Other Sources, and Total Reduced Sulfur (TRS)), Section 33–070(3)(A), Section 33–070(6)(B), Section 33–070(7)(A), Section 33–070(7)(B), Section 33–070(8)(C)(1)(a), Section 33–070(8)(C)(2)(a), Section 33–080, and Section 33–085; and Title 34, as effective June 13, 2000, except for Section 34–025, Section 34–035, Section 34–060(6), Section 34–060(8), Section 34–080, Section 34–160, Section 34–170, Section 34–180, Section 34–190, Section 34–200, Section 34–210, Section 34–220, and Section 34–230.

(B) Remove the following provisions from the current incorporation by reference: Section 12–005, Section 12–010, Section 12–020, and Section12–035 of Title 12, as effective November 8, 1983; Section 12–025 of Title 12, as effective September 9, 1988; Title 12, as effective February 13, 1990; Title 14, as effective July 12, 1988; Title 15, as effective February 13, 1990; Section 32–005, Section 32–010, Section 32–025, Section 32–030, Section 32–035, Section 32–040, Section 32–045, Section 32–055, Section 32–065, Section 32–100, Section 32–101, Section 32–102, and Section 32–103 of Title 32, as effective 9–14–82; Section 32–800 of Title 32, as effective 1–8–85; Section 32–104 and Section 32–990 of Title 32, as effective 11–8–83; Section 33–020, Section 33–025, Section 33–030, Section 33–045, Section 33–055, Section 33–060, and Section 33–065 of Title 33, as effective 5–15–79; Section 33–070 of Title 33, as effective 9–14–82; Section 34–001, Section 34–010, Section 34–015, Section 34–020, Section 34–025, Section 34–030, Section 34–035, Section 34–040, Section 34–045, Section 34–050, and Table A of Title 34, as effective 1–9–90; and Section 34–005 of Title 34, as effective 2–13–90.

(ii) Additional Material:

(A) Title 15, Enforcement Procedure and Civil Penalties, as effective June 13, 1995.

3. Section 52.1977 is amended by revising Section 3.2 to read as follows:

### § 52.1977 Content of approved State submitted implementation plan.

* * * * *

**3.2 Lane Regional Air Pollution Authority Regulations**

(LRAPA effective date)/EPA SIP effective date

Title 11 Policy and General Provisions
- 11–005 Policy (10–9–79)/11–8–93
- 11–010 Construction and Validity (10–9–79)/11–8–93

Title 12 Definitions (3–8–94)/October 2, 2001

Title 16 Home Wood Heating Curtailment Program Enforcement
- 16–001 Purpose (7–13–93)/10–24–94
- 16–010 Definitions (7–13–93)/10–24–94
- 16–100 Civil Penalty Schedule (7–13–93)/10–24–94
- 16–110 Classification of Violations (7–13–93)/10–24–94
- 16–120 Notice of Violation (7–13–93)/10–24–94
- 16–130 Appeal of Civil Penalty (7–13–93)/10–24–94

16–140 Conducting Contested Case Evidentiary Hearings (7–13–93)/10–24–94
16–150 Evidentiary Rules (7–13–93)/10–24–94
16–160 Final Orders (7–13–93)/10–24–94
16–170 Default Orders (7–13–93)/10–24–94
Title 30 Incinerator Regulations
30–005 Purpose and Applicability (3–8–94)/October 2, 2001
30–010 Definitions (3–8–94)/October 2, 2001
30–015 Best Available Control Technology for Solid and Infectious Waste Incinerators (3–8–94)/October 2, 2001
30–020 Emission Limitations for Solid and Infectious Waste Incinerators *except for sections (2) & (8) (3–8–94)/October 2, 2001
30–025 Design and Operation for Solid and Infectious Waste Incinerators *except for section (9) (3–8–94)/October 2, 2001
30–030 Continuous Emission Monitoring for Solid and Infectious Waste Incinerators *except for sections (1)(I) & (2)(E) (3–8–94)/October 2, 2001
30–035 Reporting and Testing for Solid and Infectious Waste Incinerators (3–8–94)/October 2, 2001
30–040 Compliance for Solid and Infectious Waste Incinerators (3–8–94)/October 2, 2001
30–045 Emission Limitations of Crematory Incinerators *except for section (3) (3–8–94)/October 2, 2001
30–050 Design and Operation of Crematory Incinerators (3–8–94)/October 2, 2001
30–055 Monitoring and Reporting for Crematory Incinerators (3–8–94)/October 2, 2001
30–060 Compliance of Crematory Incinerators (3–8–94)/October 2, 2001
Title 32 Emission Standards
32–001 Definitions (11–10–94)/October 2, 2001
32–005 Highest and Best Practicable Treatment and Control Required (11–10–94)/October 2, 2001
32–006 Pollution Prevention (11–10–94)/October 2, 2001
32–007 Operating and Maintenance Requirements (11–10–94)/October 2, 2001
32–008 Typically Achievable Control Technology (TACT) (11–10–94)/October 2, 2001
32–009 Additional Control Requirements for Stationary Sources of Air Contaminants (11–10–94)/October 2, 2001
32–010 Visible Air Contaminant Limitations (11–10–94)/October 2, 2001
32–015 Particulate Matter Weight Standards (11–10–94)/October 2, 2001
32–020 Particulate Matter Weight Standards—Existing Combustion Sources (11–10–94)/October 2, 2001
32–030 Particulate Matter Weight Standards—New Combustion Sources (11–10–94)/October 2, 2001
32–045 Process Weight Emission Limitations (11–10–94)/ October 2, 2001
32–055 Particulate Matter Size Standard (11–10–94)/October 2, 2001
32–060 Airborne Particulate Matter (9–14–82)/11–8–93
32–060 Air Conveying Systems (11–10–94)/October 2, 2001
32–065 Sulfur Content of Fuels (11–10–94)/October 2, 2001
32–070 Sulfur Dioxide Emission Limitations (11–10–94)/October 2, 2001
32–090 Other Emissions (11–10–94)/October 2, 2001
Table 1 Table of Allowable Rate of Particulate Emissions—Based on Process Weight (11–10–94)/October 2, 2001
Title 33 Prohibited Practices and Control of Special Classes of Industry
33–030 Concealment and Masking of Emissions(11–10–94)/October 2, 2001
33–045 Gasoline Tanks (11–10–94)/October 2, 2001
33–060 Board Products Industries (Hardwood, Particleboard, Plywood, Veneer) (11–10–94)/October 2, 2001
33–065 Charcoal Producing Plants (11–10–94)/October 2, 2001
33–070 Kraft Pulp Mills *except sections (1)(Definitions of Non-Condensibles, Other Sources, and Total Reduced Sulfur (TRS)), (3)(A), (6)(B), (7)(A), (7)(B), (8)(C)(1)(a), & (8)(C)(2)(a) (11–10–94)/October 2, 2001
33–075 Hot Mix Asphalt Plants (11–10–94)/October 2, 2001
Title 34 Stationary Source Rules and Permitting Procedures
34–001 General Policy and Rule Organization (6–13–00)/October 2, 2001
34–005 Definitions (6–13–00)/October 2, 2001

*Rules Applicable to All Stationary Sources*

34–010 Applicability (6–13–00)/October 2, 2001
34–015 Request for Information (6–13–00)/October 2, 2001
34–020 Information Exempt from Disclosure (6–13–00)/October 2, 2001
34–030 Source Registration (6–13–00)/October 2, 2001
34–040 Compliance Schedules for Existing Sources Affected by New Rules (6–13–00)/October 2, 2001

*Rules Applicable to Sources Required To Have ACDP or Title V Operating Permits*

34–050 Applicability (6–13–00)/October 2, 2001
34–060 Plant Site Emission Limit Rules (6–13–00)/October 2, 2001 *except for sections (6) and (8)
34–070 Sampling, Testing and Monitoring of Air Contaminant Emissions (6–13–00)/October 2, 2001

*Rules Applicable to Sources Required To Have Air Contaminant Discharge Permits (ACDP)*

34–090 Purpose and Applicability (6–13–00)/October 2, 2001
34–100 Permit Categories (6–13–00)/October 2, 2001
34–110 Permit Required (6–13–00)/October 2, 2001
34–120 Synthetic Minor Sources (6–13–00)/October 2, 2001
34–130 General Procedures for Obtaining ACDP Permits (6–13–00)/October 2, 2001
34–140 Permit Duration (6–13–00)/October 2, 2001
34–150 ACDP Fees (6–13–00)/October 2, 2001
Table A Air Contaminant Sources and Associated Fee Schedule (6–13–00)/October 2, 2001
Title 38 New Source Review
38–001 General Applicability (2–13–90)/11–8–93
38–005 Definitions (2–13–90)/11–8–93
38–010 General Requirements for Major Sources and Major Modifications (2–13–90)/11–8–93
38–015 Additional Requirements for Major Sources or Major Modifications Located in Nonattainment Areas (2–13–90)/11–8–93
38–020 Additional Requirements for Major Sources or Major Modifications in Attainment or Unclassified Areas (Prevention of Significant Deterioration) (2–13–90)/11–8–93
38–025 Exemptions for Major Sources and Major Modifications (2–13–90)/11–8–93
38–030 Baseline for Determining Credits for Offsets (2–13–90)/11–8–93
38–035 Requirements for Net Air

Quality Benefit for Major Sources and Major Modifications (2–13–90)/11–8–93
38–040 Emission Reduction Credit Banking (2–13–90)/11–8–93
38–045 Requirements for Non-Major Sources and Non-Major Modifications (2–13–90)/11–8–93
38–050 Stack Height and Dispersion Techniques (2–13–90)/11–8–93
Title 39 Contingency for PM10 Sources in Eugene-Springfield Non-Attainment Area
39–001 Purpose (11–13–91)/10–24–94
39–005 Relation to Other Rules (11–13–91)/10–24–94
39–010 Applicability (11–13–91)/10–24–94
39–015 Definitions (11–13–91)/10–24–94
39–020 Compliance Schedule for Existing Sources (11–13–91)/10–24–94
39–025 Wood-Waste Boilers (11–13–91)/10–24–94
39–030 Veneer Dryers (11–13–91)/10–24–94
39–035 Particleboard Plants and Wood Particle Dryers (11–13–91)/10–24–94
39–040 Kraft Pulp Mills (11–13–91)/10–24–94
39–050 Air Conveying Systems (11–13–91)/10–24–94
39–055 Fugitive Dust (11–13–91)/10–24–94
39–060 Open Burning (11–13–91)/10–24–94
Title 47 Rules for Open Outdoor Burning 47–001 General Policy (8–14–84)/11–8–93
47–005 Statutory Exemptions from These Rules (8–14–84)/11–8–93
47–010 Definitions (1–1–93)/3–13–95
47–015 Open Burning Requirements (1–1–93)/3–13–95
47–020 Letter Permits (1–1–93)/3–13–95
47–030 Summary of Seasons, Areas, and Permit Requirements for Open Outdoor Burning (1–1–93)/3–13–95
Title 50 Ambient Air Standards 50–005 General (7–12–88)/11–8–93
50–015 Suspended Particulate Matter (7–12–88)/11–8–93
50–025 Sulfur Dioxide (7–12–88)/11–8–93
50–030 Carbon Monoxide (7–12–88)/11–8–93
50–035 Ozone (7–12–88)/11–8–93
50–040 Nitrogen Dioxide (7–12–88)/11–8–93
50–045 Lead (7–12–88)/11–8–93
Title 51 Air Pollution Emergencies
51–005 Introduction (7–12–88)/11–8–93
51–010 Episode Criteria (7–12–88)/11–8–93
51–015 Emission Reduction Plans (7–12–88)/11–8–93
51–020 Preplanned Abatement Strategies (7–12–88)/11–8–93
51–025 Implementation (7–12–88)/11–8–93
Table I Air Pollution Episode, Alert Condition Emission Reduction Plan (7–12–88)/11–8–93
Table II Air Pollution Episode, Warning Conditions Emission Reduction Plan (7–12–88)/11–8–93

* * * * *

4. Section 52.1988 is amended by revising paragraph (b) to read as follows:

**§ 52.1988 Air contaminant discharge permits.**

* * * * *

(b) Emission limitations and other provisions contained in Air Contaminant Discharge Permits and Federal Operating Permits established by the Lane Regional Air Pollution Authority pursuant to the rules applicable to sources required to have ACDP or Title V Operating Permits (Title 34, Sections 050, 060 (except for 060(6) ''Plant Site Emission Limits for Sources of Hazardous Air Pollutants'' and 060(8) ''Alternative Emission Controls (Bubble)''), and 070) and the rules applicable to sources required to have air contaminant discharge permits (ACDP) (Title 34, Sections 090 through 150), shall be applicable requirements of the Federally-approved Oregon SIP (in addition to any other provisions) for the purposes of Section 113 of the Clean Air Act and shall be enforceable by EPA and by any person in the same manner as other requirements of the SIP.

[FR Doc. 01–19320 Filed 8–2–01; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 541

**[Docket No. NHTSA–2001–9831]**

**RIN 2127–AI08**

## Federal Motor Vehicle Theft Prevention Standard; Final Listing of Model Year 2002 High-Theft Vehicle Lines

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Final rule.

**SUMMARY:** This final rule announces NHTSA's determination for model year (MY) 2002 high-theft vehicle lines that are subject to the parts-marking requirements of the Federal motor vehicle theft prevention standard, and high-theft MY 2002 lines that are exempted from the parts-marking requirements because the vehicles are equipped with antitheft devices determined to meet certain statutory criteria pursuant to the statute relating to motor vehicle theft prevention.

**EFFECTIVE DATE:** The amendment made by this final rule is effective August 3, 2001.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rosalind Proctor, Consumer Programs Division, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

**SUPPLEMENTARY INFORMATION:** The Anti Car Theft Act of 1992, Pub. L. 102–519, amended the law relating to the parts-marking of major component parts on designated high-theft vehicle lines and other motor vehicles. The Anti Car Theft Act amended the definition of ''passenger motor vehicle'' in 49 U.S.C. 33101(10) to include a ''multipurpose passenger vehicle or light duty truck when that vehicle or truck is rated at not more than 6,000 pounds gross vehicle weight.'' Since ''passenger motor vehicle'' was previously defined to include passenger cars only, the effect of the Anti Car Theft Act is that certain multipurpose passenger vehicle (MPV) and light-duty truck (LDT) lines may be determined to be high-theft vehicles subject to the Federal motor vehicle theft prevention standard (49 CFR part 541).

The purpose of the theft prevention standard is to reduce the incidence of motor vehicle theft by facilitating the tracing and recovery of parts from stolen vehicles. The standard seeks to facilitate such tracing by requiring that vehicle identification numbers (VINs), VIN derivative numbers, or other symbols be placed on major component vehicle parts. The theft prevention standard requires motor vehicle manufacturers to inscribe or affix VINs onto covered original equipment major component parts, and to inscribe or affix a symbol identifying the manufacturer and a common symbol identifying the replacement component parts for those original equipment parts, on all vehicle lines selected as high-theft.

The Anti Car Theft Act also amended 49 U.S.C. 33103 to require NHTSA to promulgate a parts-marking standard applicable to major parts installed by manufacturers of ''passenger motor vehicles (other than light duty trucks) in

not to exceed one-half of the lines not designated under 49 U.S.C. 33104 as high-theft lines.'' Section 33103(a) further directed NHTSA to select only lines not designated under § 33104 of this title as high theft lines. NHTSA lists each of these selected lines in appendix B to part 541. Since § 33103 did not specify marking of replacement parts for below-median lines, the agency does not require marking of replacement parts for these lines. NHTSA published a final rule amending 49 CFR part 541 to include the definitions of MPV and LDT, and major component parts. See 59 FR 64164, (December 13, 1994).

49 U.S.C. 33104(a)(3) specifies that NHTSA shall select high-theft vehicle lines, with the agreement of the manufacturer, if possible. Section 33104(d) provides that once a line has been designated as likely high-theft, it remains subject to the theft prevention standard unless that line is exempted under § 33106. Section 33106 provides that a manufacturer may petition to have a high-theft line exempted from the requirements of § 33104, if the line is equipped with an antitheft device as standard equipment. The exemption is granted if NHTSA determines that the antitheft device is likely to be as effective as compliance with the theft prevention standard in reducing and deterring motor vehicle thefts.

The agency annually publishes the names of the lines which were previously listed as high-theft, and the lines which are being listed for the first time and will be subject to the theft prevention standard beginning in a given model year. It also identifies those lines that are exempted from the theft prevention standard for a given model year under § 33104. Additionally, this listing identifies those lines (except light-duty trucks) in appendix B to part 541 that have theft rates below the 1990/1991 median theft rate but are subject to the requirements of this standard under § 33103.

On May 26, 2000, the final listing of high-theft lines for the MY 2001 vehicle lines was published in the **Federal Register** (65 FR 34106). The final listing identified eight vehicle lines that were listed for the first time and became subject to the theft prevention standard beginning with the 2001 model year.

For MY 2002, the agency identified four new vehicle lines that are likely to be high-theft lines, in accordance with the procedures published in 49 CFR part 542. The new lines are the Honda Acura RSX, the Isuzu Axiom (MPV), the Suzuki Aerio, and the Mitsubishi Lancer. In addition to these four vehicle lines, the list of high-theft vehicle lines includes all lines previously designated as high-theft and listed for prior model years.

Subsequent to publishing the MY 2001 final rule, the agency was informed by Hyundai America Technical Center, Inc., (Hyundai) that its MY 1998 high-theft line, previously codenamed the S–II line should be identified in the Appendix A listing as a reintroduction of the Kia Sephia line. Hyundai also informed the agency that because the MY 2000 Kia Spectra is built on the same platform as its sister line, the Kia Sephia, it believed the Spectra line would likely be a high-theft vehicle and has been parts-marking the line since its introduction. The agency agrees with Hyundai's evaluation of the Kia Spectra line as a high-theft vehicle. Therefore, the MY 2000 Kia Spectra line should be subject to the parts-marking requirements of the Theft Prevention Standard and Hyundai should continue parts-marking the line. Additionally, the BMW Z8 and Toyota Prius vehicle lines were erroneously omitted from the Appendix A listing for the MY 2000 and 2001 respectively. Accordingly, Appendix A has also been amended to reflect these changes.

The list of lines that have been exempted by the agency from the parts-marking requirements of part 541 includes high-theft lines newly exempted in full beginning with MY 2002. The three vehicle lines newly exempted in full are the BMW MINI line, the Ford Mercury Grand Marquis and the General Motors Chevrolet Venture.

Additionally, since the agency granted the Ford Motor Company an exemption from the parts-marking requirements for its Mercury Grand Marquis line, it has been deleted from Appendix B.

The vehicle lines listed as being subject to the parts-marking standard have previously been designated as high-theft lines in accordance with the procedures set forth in 49 CFR part 542. Under these procedures, manufacturers evaluate new vehicle lines to conclude whether those new lines are likely to be high theft. The manufacturer submits these evaluations and conclusions to the agency, which makes an independent evaluation; and, on a preliminary basis, determines whether the new line should be subject to the parts-marking requirements. NHTSA informs the manufacturer in writing of its evaluations and determinations, together with the factual information considered by the agency in making them. The manufacturer may request the agency to reconsider the preliminary determinations. Within 60 days of the receipt of these requests, the agency makes its final determination. NHTSA informs the manufacturer by letter of these determinations and its response to the request for reconsideration. If there is no request for reconsideration, the agency's determination becomes final 45 days after sending the letter with the preliminary determination. Each of the new lines on the high-theft list has been the subject of a final determination under either 49 U.S.C. 33103 or 33104.

The vehicle lines listed as being exempt from the standard have previously been exempted in accordance with the procedures of 49 CFR part 543 and 49 U.S.C. 33106.

Similarly, the low-theft lines listed as being subject to the parts-marking standard have previously been designated in accordance with the procedures set forth in 49 U.S.C. 33103.

Therefore, NHTSA finds for good cause that notice and opportunity for comment on these listings are unnecessary. Further, public comment on the listing of selections and exemptions is not contemplated by 49 U.S.C. chapter 331.

For the same reasons, since this revised listing only informs the public of previous agency actions and does not impose additional obligations on any party, NHTSA finds for good cause that the amendment made by this notice should be effective as soon as it is published in the **Federal Register**.

**Regulatory Impacts**

*1. Costs and Other Impacts*

NHTSA has analyzed this rule and determined that it is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has also considered this notice under Executive Order 12866. As already noted, the selections in this final rule have previously been made in accordance with the provisions of 49 U.S.C. 33104, and the manufacturers of the selected lines have already been informed that those lines are subject to the requirements of 49 CFR part 541 for MY 2002. Further, this listing does not actually exempt lines from the requirements of 49 CFR part 541; it only informs the general public of all such previously granted exemptions. Since the only purpose of this final listing is to inform the public of actions for MY 2002 that the agency has already taken, a full regulatory evaluation has not been prepared.

*2. Regulatory Flexibility Act*

The agency has also considered the effects of this listing under the Regulatory Flexibility Act. I hereby

certify that this rule will not have a significant economic impact on a substantial number of small entities. As noted above, the effect of this final rule is simply to inform the public of those lines that are already subject to the requirements of 49 CFR part 541 for MY 2002. The agency believes that the listing of this information will not have any economic impact on small entities.

*3. Environmental Impacts*

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this rule, and determined that it will not have any significant impact on the quality of the human environment.

*4. Federalism*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

*5. Civil Justice Reform*

This final rule does not have a retroactive effect. In accordance with § 33118 when the Theft Prevention Standard is in effect, a State or political subdivision of a State may not have a different motor vehicle theft prevention standard for a motor vehicle or major replacement part. 49 U.S.C. 33117 provides that judicial review of this rule may be obtained pursuant to 49 U.S.C. 32909. Section 32909 does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

**List of Subjects in 49 CFR Part 541**

Administrative practice and procedure, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 541 is amended as follows:

## PART 541—[AMENDED]

1. The authority citation for Part 541 continues to read as follows:

**Authority:** 49 U.S.C. 33102–33104 and 33106; delegation of authority at 49 CFR 1.50.

2. In Part 541, Appendices A, A–I, A–II, and B are revised to read as follows:

APPENDIX A TO PART 541.—LINES SUBJECT TO THE REQUIREMENTS OF THIS STANDARD

| Manufacturer | Subject lines |
|---|---|
| Alfa Romeo | Milano 161, and 164. |
| BMW | Z3, Z8,[1] and 6 Car Line. |
| Consulier | Consulier GTP |
| Daewoo | Korando, Musso (MPV), and Nubira. |
| DaimlerChrysler | Chrysler Cirrus, Chrysler Fifth Avenue/Newport, Chrysler Laser, Chrysler LeBaron/Town & Country, Chrysler LeBaron GTS, Chrysler's TC, Chrysler New Yorker Fifth Avenue, Chrysler Sebring, Chrysler Town & Country, Dodge 600, Dodge Aries, Dodge Avenger, Dodge Colt, Dodge Daytona, Dodge Diplomat, Dodge Lancer, Dodge Neon, Dodge Shadow, Dodge Stratus, Dodge Stealth, Eagle Summit, Eagle Talon, Jeep Cherokee (MPV), Jeep Grand Cherokee (MPV), Jeep Wrangler (MPV), Plymouth Caravelle, Plymouth Colt, Plymouth Laser, Plymouth Gran Fury, Plymouth Neon, Plymouth Reliant, Plymouth Sundance, and Plymouth Breeze. |
| Ferrari | Mondial 8, and 328. |
| Ford | Ford Aspire, Ford Escort, Ford Probe, Ford Thunderbird, Lincoln Continental, Lincoln Mark, Lincoln Town Car, Mercury Capri, Mercury Cougar, Merkur Scorpio, and Merkur XR4Ti. |
| General Motors | Buick Electra, Buick Reatta, Buick Skylark, Chevrolet Malibu, Chevrolet Nova, Chevrolet Blazer (MPV), Chevrolet Prizm, Chevrolet S–10 Pickup, Geo Storm, Chevrolet Tracker (MPV), GMC Jimmy (MPV), GMC Sonoma Pickup, Oldsmobile Achieva (MYs 1997–1998), Oldsmobile Bravada, Oldsmobile Cutlass, Oldsmobile Cutlass Supreme (MYs 1988–1997), Oldsmobile Intrigue, Pontiac Fiero, Pontiac Grand Prix, and Saturn Sports Coupe. |
| Honda | Accord, CRV (MPV), Odyssey (MPV), Passport, Prelude, S2000, Acura Integra, Acura MDX (MPV), and Acura RSX[2]. |
| Hyundai | Accent, Sonata, and Tiburon. |
| Isuzu | Amigo, Axiom 2, Impulse, Rodeo, Rodeo Sport, Stylus, Trooper/Trooper II, and VehiCross (MPV). |
| Jaguar | XJ. |
| Kia Motors | Optima, Rio, Sephia (1998–2002)[3], and Spectra[1]. |
| Lotus | Elan. |
| Maserati | Biturbo, Quattroporte and 228. |
| Mazda | 626, MX–3, MX–5 Miata, and MX–6. |
| Mercedes-Benz | 190 D, 190 E, 260E (1987–1989), 300 SE (1988–1991), 300 TD (1987), 300 SDL (1987), 300 SEL 350 SDL (1990–1991), 420 SEL (1987–1991), 560 SEL (1987–1991), 560 SEC (1987–1991), and 560 SL. |
| Mitsubishi | Cordia, Eclipse, Lancer[2], Mirage, Montero (MPV), Montero Sport (MPV), Tredia, and 3000GT. |
| Nissan | 240SX, Sentra/200SX, and Xterra. |
| Peugeot | 405. |
| Porsche | 924S. |
| Subaru | XT, SVX, Forester, and Legacy. |
| Suzuki | Aerio[2], X90 (MPV), Sidekick (MYs 1997–1998), and Vitara/Grand Vitara (MPV). |
| Toyota | Toyota 4-Runner (MPV), Toyota Avalon, Toyota Camry, Toyota Celica, Toyota Corolla/Corolla Sport, Toyota Echo, Toyota Highlander (MPV), Toyota MR2, Toyota MR2 Spyder, Toyota Prius[4], Toyota RAV4 (MPV), Toyota Sienna (MPV), Toyota Tercel, Lexus IS300, and Lexus RX300 (MPV). |
| Volkswagen | Audi Quattro, and Volkswagen Scirocco. |

[1] Line added for MY 2000.
[2] Line added for MY 2002.
[3] Line added for MY 1998.
[4] Line added for MY 2001.

APPENDIX A–I.—HIGH-THEFT LINES WITH ANTITHEFT DEVICES WHICH ARE EXEMPTED FROM THE PARTS-MARKING REQUIREMENTS OF THIS STANDARD PURSUANT TO 49 CFR PART 543

| Manufacturer | Subject lines |
|---|---|
| Austin Rover | Sterling. |
| BMW | MINI [1] and X5, 3 Car Line, 5 Car Line, 7 Car Line, and 8 Car Line. |
| Daimler Chrysler | Chrysler Conquest, and Chrysler Imperial. |
| Ford | Mustang, Mercury Sable, Mercury Grand Marquis,[1] and Taurus. |
| General Motors | Buick LeSabre, Buick Park Avenue, Buick Regal/Century, Buick Riviera, Cadillac Allante, Cadillac Deville, Cadillac Seville, Chevrolet Cavalier, Chevrolet Corvette, Chevrolet Impala/Monte Carlo, Chevrolet Lumina/Monte Carlo (MYs 1996–1999), Chevrolet Malibu, Chevrolet Venture,[1] Oldsmobile Alero, Oldsmobile Aurora, Oldsmobile Toronado, Pontiac Bonneville, Pontiac Grand Am, and Pontiac Sunfire. |
| Honda | Acura CL, Acura Legend (MYs 1991–1996), Acura NSX, Acura RL, Acura SLX, Acura TL, and Acura Vigor (MYs 1992–1995). |
| Isuzu | Impulse (MYs 1987–1991). |
| Jaguar | XK. |
| Mazda | 929, RX–7, and Millenia. |
| Mercedes-Benz | 124 Car Line (the models within this line are): 260E, 300D, 300E, 300CE, 300TE, 400E, and 500E.<br>129 Car Line (the models within this line are): 300SL, 500SL, 600SL, SL320, SL500, and SL600.<br>202 Car Line (the models within this line are): C220, C230, C280, C36, and C43. |
| Mitsubishi | Galant, Starion, and Diamante. |
| Nissan | Nissan Altima, Nissan Maxima, Nissan Pathfinder, Nissan 300ZX, Infiniti I30, Infiniti J30, Infiniti M30, Infiniti QX4, and Infiniti Q45. |
| Porsche | 911, 928, 968, and 986 Boxster. |
| Saab | 9–3, 900 (1994–1998)[2], and 9000 (1989–1998)[3]. |
| Toyota | Toyota Supra, Toyota Cressida, Lexus ES, Lexus GS, Lexus LS, and Lexus SC. |
| Volkswagen | Audi 5000S Audi 100/A6, Audi 200/S4/S6, Audi Allroad Quattro (MPV), Audi Cabriolet, Volkswagen Cabrio, Volkswagen Corrado, Volkswagen Golf/GTI, Volkswagen Jetta/Jetta III, and Volkswagen Passat. |

[1] Lines exempted in full beginning with MY 2002.
[2] Replaced by the 9–3 in MY 1999.
[3] Replaced by the 9–5 in MY 1999.

APPENDIX A–II TO PART 541.—HIGH-THEFT LINES WITH ANTITHEFT DEVICES WHICH ARE EXEMPTED IN-PART FROM THE PARTS-MARKING REQUIREMENTS OF THIS STANDARD PURSUANT TO 49 CFR PART 543

| Manufacturers | Subject lines | Parts to be marked |
|---|---|---|
| General Motors | Cadillac Eldorado | Engine, Transmission. |
| | Cadillac Concours | Engine, Transmission. |
| | Oldsmobile Ninety-Eight | Engine, Transmission. |
| | Pontiac Firebird | Engine, Transmission. |
| | Chevrolet Camaro | Engine, Transmission. |
| | Oldsmobile Eighty-Eight | Engine, Transmission. |

APPENDIX B.—PASSENGER MOTOR VEHICLE LINES (EXCEPT LIGHT-DUTY TRUCKS) WITH THEFT RATES BELOW THE 1990/91 MEDIAN THEFT RATE, SUBJECT TO THE REQUIREMENTS OF THIS STANDARD

| Manufacturer | Subject lines |
|---|---|
| Ford | Crown Victoria. |
| General Motors | Chevrolet Astro (MPV).<br>GMC Safari (MPV). |
| Honda | Civic. |

Issued on: July 30, 2001.

**Stephen R. Kratzke,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 01–19468 Filed 8–2–01; 8:45 am]

BILLING CODE 4910–59–P

# Proposed Rules

Federal Register

Vol. 66, No. 150

Friday, August 3, 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.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 50

**RIN 3150–AG61**

### Industry Codes and Standards; Amended Requirements

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule and withdrawal of proposed rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) proposes to amend its regulations to incorporate by reference a later edition and addenda of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (BPV Code) and the ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code) to provide updated rules for construction, inservice inspection (ISI), and inservice testing (IST) of components in light-water cooled nuclear power plants. The proposed rule identifies the latest edition and addenda of the ASME BPV and OM Codes that have been approved for use by the NRC subject to certain limitations and modifications. The NRC is also withdrawing a supplemental proposed rule that would have eliminated the requirement for licensees to update their ISI and IST programs every 120 months to the latest ASME Code edition and addenda incorporated by reference in the regulations.

**DATES:** Comments regarding the proposed amendment must be submitted by October 17, 2001. Comments received after this date will be considered if it is practical to do so, but the Commission is only able to ensure consideration of comments received on or before this date.

**ADDRESSES:** Comments may be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemaking and Adjudications Staff. Comments may be hand-delivered to 11555 Rockville Pike, Rockville, Maryland, 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking Website at *http://ruleforum.llnl.gov.* This site provides the ability to upload comments as files (in any format), provided that your Web browser supports that function. For information about the interactive rulemaking Website, contact Ms. Carol Gallagher at, (301) 415–5905, or via e-mail at: *cag@nrc.gov.* Certain documents related to this rulemaking, including comments received, may be examined at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, (301) 415–4737, or by email to *pdr@nrc.gov.* The availability of documents associated with this rulemaking is further discussed in Section 6 below, under **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Stephen Tingen, Division of Engineering, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001. Alternatively, you may contact Mr. Tingen at (301) 415–1280, or via e-mail at: sgt@nrc.gov.

**SUPPLEMENTARY INFORMATION:**

1. Background
2. Summary of Proposed Revisions to 10 CFR 50.55a
2.1 Section III
2.2 Section XI
2.2.1 Owner-Defined Requirements for Class CC and Class MC Components
2.2.1.1 Concrete Containment Visual Examination Qualification
2.2.1.2 Visual Examination Qualification Requirements for Containment Surfaces
2.2.1.3 General and Detailed Examinations
2.2.1.4 Bolting Acceptance Standard
2.2.2 Examination of Containment Bolted Connections
2.2.3 Acceptance Standard for Surfaces Requiring Augmented Ultrasonic Examinations
2.2.4 Containment Penetration Piping
2.2.5 Certification of Nondestructive Examination Personnel
2.2.6 Substitution of Alternative Methods
2.2.7 System Leakage Tests
2.2.8 Table IWB–2500–1 Examination Requirements
2.2.9 Supplemental Annual Training Requirements for Ultrasonic Examiners
2.2.10 Underwater Welding
2.3 Appendix VIII to Section XI
2.3.1 Examination Coverage for Dissimilar Metal Pipe Welds
2.3.2 Reactor Vessel Single Side Examinations
2.3.3 Qualification Test Samples
2.3.4 Implementation of Appendix VIII to Section XI
2.4 ASME OM Code
3. Section-by-Section Analysis of Substantive Changes
4. Withdrawal of a Proposed Rule to Eliminate 120-Month Update
5. Draft Generic Aging Lessons Learned Report
6. Availability of Documents
7. Plain Language
8. Voluntary Consensus Standards
9. Finding of No Significant Environmental Impact: Availability
10. Paperwork Reduction Act Statement
11. Regulatory Analysis
12. Regulatory Flexibility Certification
13. Backfit Analysis

## 1. Background

The regulations in 10 CFR 50.55a require that nuclear power plant licensees—

(1) Construct Class 1, 2, and 3 components in accordance with the provisions provided in Section III, Division 1, ''Requirements for Construction of Nuclear Power Plant Components,'' of the ASME BPV Code;

(2) Inspect Class 1, 2, and 3, metal containment (MC), and concrete containment (CC) components in accordance with the provisions 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, 2, and 3 pumps and valves in accordance with the provisions provided in the ASME OM Code.

The regulations in 10 CFR 50.55a also require that licensees revise their ISI and IST programs every 120 months to the edition and addenda of the ASME Code incorporated by reference into 10 CFR 50.55a that is in effect 12 months prior to the start of the new 120-month interval; permit licensees to voluntarily update their construction, ISI, and IST

programs at any time to the most recent edition and addenda of the ASME BPV and/or OM Codes incorporated by reference in 10 CFR 50.55a with the approval of the NRC; and specify the edition and addenda of Section III of the ASME BPV Code that must be applied to the construction of reactor coolant pressure boundary components and Quality Group B and C components.

The NRC proposes to amend its regulations in 10 CFR 50.55a to incorporate by reference the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of Division 1 rules of Section III of the ASME BPV Code; the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of Division 1 rules of Section XI of the ASME BPV Code; and the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of the ASME OM Code for construction, ISI, and IST of components in nuclear power plants. The NRC has reviewed the 1997 Addenda, 1998 Edition, the 1999 Addenda, and the 2000 Addenda of the ASME BPV Code, Sections III and XI, and the ASME OM Code, and concluded that—

(1) Section III of the ASME BPV Code is acceptable for use with no new proposed limitations or modifications;

(2) Section XI of the ASME BPV Code is acceptable for use subject to proposed limitations and modifications; and

(3) The ASME OM Code is acceptable for use subject to one proposed modification.

The NRC-proposed limitations and modifications address enhancements to the provisions in the ASME BPV and OM Codes. The ASME OM Code does not issue an addenda in the same year that an edition is issued. Therefore, there is not a 1998 Addenda to the ASME OM Code. The ASME BPV Code also did not issue an addenda in the same year that 1998 Edition was issued. Therefore, there is not a 1998 Addenda to Section III and Section XI of the ASME BPV Code.

The NRC also proposes revisions to the regulations in 10 CFR 50.55a that licensees use to modify the implementation of Appendix VIII, ''Performance Demonstration for Ultrasonic Examinations Systems,'' to Section XI of the ASME BPV Code. The proposed amendment would clarify existing ultrasonic examination qualification requirements in 10 CFR 50.55a. The proposed amendment would also add new requirements to clarify the coordination of Appendix VIII with other parts of Section XI.

On April 27, 1999 (64 FR 22580), the NRC proposed to eliminate the requirement for licensees to update their ISI and IST programs beyond a baseline edition and addenda of the ASME BPV Code. In a staff requirements memorandum (SRM) dated April 13, 2000, the Commission disapproved the elimination of the 120-month update requirement. Therefore, the Commission is withdrawing the April 27, 1999 proposed rule (64 FR 22580), as discussed in Section 4 below.

## 2. Summary of Proposed Revisions to 10 CFR 50.55a

### *2.1 Section III*

The proposed amendment would revise 10 CFR 50.55a(b)(1) to incorporate by reference the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of Division 1 of Section III of the ASME BPV Code. The proposed amendment would extend the requirements in 10 CFR 50.55a(b)(1)(ii), 50.55a(b)(1)(iii), and 50.55a(b)(1)(v) to the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of Section III of the ASME BPV Code. The remaining limitations and modifications would remain the same. No new limitations or modifications would be imposed on the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda.

### *2.2 Section Xl*

The proposed amendment would revise 10 CFR 50.55a(b)(2), to incorporate by reference the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of Division 1 of Section XI of the ASME BPV Code. The proposed amendment would extend the requirements in 10 CFR 50.55a(b)(2)(viii) and 50.55a(b)(2)(ix) to the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of Section XI of the ASME BPV Code. The proposed amendment would extend the requirements in 50.55a(b)(2)(xi), 50.55a(b)(2)(xv), and 50.55a(b)(2)(xvii) to the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of Section XI of the ASME BPV Code.

The proposed amendment would delete 50.55a(g)(6)(ii)(B)(1) through (4) because the implementation dates have expired and all licensees have completed their first containment inservice inspection requirements or have been approved by an exemption for a delay. As licensees have begun implementing their containment ISI programs, the NRC has received requests to clarify the start of the first 120-month interval. Therefore, the new proposed 10 CFR 50.55a(g)(6)(ii)(B)(1) would clarify that the start date of the first 120-month interval for the ISI of Class MC and Class CC components must coincide with the start of the first containment inspection. The requirement in 10 CFR 50.55a(g)(6)(ii)(B)(5) would be redesignated as 50.55a(g)(6)(ii)(B)(2). New limitations and modifications proposed are as follows:

#### 2.2.1 Owner-Defined Requirements for Class CC and Class MC Components

The proposed 10 CFR 50.55a(b)(2)(viii)(F), 50.55a(b)(2)(ix)(F), 50.55a(b)(2)(ix)(G), and 50.55a(b)(2)(ix)(H), address ''owner-defined'' requirements. Revisions to the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of Section XI would permit each licensee to define personnel qualification and visual examination requirements. Each licensee would not only be responsible for developing the procedures and requirements for the instruction, training, and approval of examination personnel, but they would also be responsible for developing procedures and requirements for performing examinations. In addition, each licensee would be permitted to define the acceptance criteria for these requirements; i.e., by evaluating the results of the examination and determining whether the results are acceptable. ASME Code requirements associated with the use of these ''owner-defined'' requirements provide little control. A licensee could re-define these requirements at any time. Because a set of ''minimum requirements'' has not been defined, it cannot be determined whether the new requirements would maintain safety and ensure the protection of public health and safety. Versions of the ASME Code prior to 1997 contained requirements that are acceptable to the NRC. Therefore, the proposed modifications and limitations provide specific requirements that the licensee shall meet in lieu of establishing its own requirements.

However, in some instances the use of ''owner-defined'' provisions are acceptable. Subparagraph IWE–2310(e) of the 1998 Edition, the 1999 Addenda, and the 2000 Addenda provides specific criteria for coated and non-coated areas of containment surfaces subject to detailed visual inspection. It states that painted or coated areas shall be examined for evidence of flaking, blistering, peeling, discoloration, and other signs of distress. For non-coated areas, it states that those areas shall be examined for evidence of cracking, discoloration, wear, pitting, excessive corrosion, gouges, surface

discontinuities, dents, and other signs of surface irregularities. Therefore, the provision for the owner to define visual examination requirements in IWE–2310(a) of the 1998 Edition, the 1999 Addenda, and the 2000 Addenda, as supplemented by the requirements in IWE–2310(e), is acceptable.

Paragraphs IWE–3510 and IWE–3511, of the 1998 Edition, the 1999 Addenda, and the 2000 Addenda, state that the owner shall define the acceptance criteria to be used when conducting a visual examination of a metal containment surface. Modifications are not imposed on these ''owner-defined'' provisions because other requirements exist in Subsection IWE of the 1998 Edition, the 1999 Addenda, and the 2000 Addenda that provide sufficient requirements to identify and correct degradations in metal containment surfaces that would be identified during visual examinations. For example, paragraph IWE–3510.2, states, ''Areas that are suspect shall be accepted by engineering evaluation or corrected by repair/replacement activities in accordance with IWE–3122. Supplemental examinations in accordance with IWE–3200 shall be performed when specified as a result of the engineering evaluation.'' Paragraph IWE–3122 provides specific acceptance criteria for evaluating the acceptability of metal containment surface visual examination results. The ''owner-defined'' acceptance criteria for visual examination of metal containment surfaces is a screening for determining when areas of degradation must be further evaluated. Therefore, the ''owner-defined'' acceptance criteria for visual examination of metal containment surfaces in IWE–3510 and IWE–3511 are acceptable.

Paragraph IWL–2310(e) of the 1998 Edition, the 1999 Addenda, and the 2000 Addenda, states that the owner shall define the requirements to be used for conducting visual examinations of tendon anchorage hardware, wires, or strands. A modification is not imposed on this ''owner-defined'' provision because other requirements in Subsection IWL of the 1998 Edition, the 1999 Addenda, and the 2000 Addenda provide sufficient requirements to be used for conducting visual examinations of tendon anchorage hardware, wires, or strands. For example, the provisions in Table IWL–2500–1, Examination Category L–B, provide specific requirements to be used for conducting visual examinations of tendon anchorage hardware, wires, or strands. Therefore, licensees are required to use the requirements in Table IWL–2500–1, Examination Category L–B, to conduct visual examinations of tendon anchorage hardware, wires, and strands.

2.2.1.1 Concrete Containment Visual Examination Qualification

The proposed modification in 10 CFR 50.55a(b)(2)(viii)(F) would require that personnel examining containment concrete surfaces and tendon anchorage hardware, wires, or strands be qualified in accordance with the procedures of IWA–2300 of the 1998 Edition, the 1999 Addenda, and the 2000 Addenda in lieu of ''owner-defined'' personnel qualification provisions in IWL–2310(d) of the 1998 Edition, and the 1999 Addenda and the 2000 Addenda. Prior to the 1997 Addenda, IWL–2310(c) required that visual examination personnel be qualified in accordance with specific requirements in IWA–2300. The qualification requirements were revised in IWL–2310(d), 1997 Addenda, to allow the owner to define the qualification requirements for personnel who perform visual examinations of concrete and tendon anchorage hardware, wires, or strands. However, the new Code provision does not provide any criteria that the licensee must use when developing qualification requirements. Therefore, the NRC is proposing that licensees continue to use the provisions in IWA–2300 to qualify personnel who perform visual inspections of containment concrete surfaces and tendon anchorage hardware, wires, or strands.

2.2.1.2 Visual Examination Qualification Requirements for Containment Surfaces

The proposed modification in 10 CFR 50.55a(b)(2)(ix)(F) would require that personnel who conduct visual examinations of containment surfaces be qualified in accordance with IWA–2300 of the 1998 Edition, the 1999 Addenda, and the 2000 Addenda in lieu of ''owner-defined'' qualification provisions in IWE–2330(a) of the 1998 Edition, the 1999 Addenda, and the 2000 Addenda. Prior to the 1998 Edition, the NRC approved provisions in IWA–2300 were used to define the qualification requirements for personnel who conduct visual examinations of containment surfaces. Paragraph IWE–2330(a) was added in the 1998 Edition and states that the licensee must define the qualification requirements for personnel who conduct visual examinations of containment surfaces. However, the revised Code provision does not provide any criteria that the licensee must use when developing qualification requirements. Therefore, the NRC is proposing that licensees continue to use the provisions in IWA–2300 to qualify personnel who conduct visual examinations of containment surfaces.

2.2.1.3 General and Detailed Visual Examinations

The proposed modification in 10 CFR 50.55a(b)(2)(ix)(G) would require that the general and detailed visual examinations required by IWE–2310(b) and IWE–2310(c) of the 1998 Edition, the 1999 Addenda, and the 2000 Addenda meet the VT–3 and VT–1 examination provisions in IWA–2210 of the 1998 Edition, the 1999 Addenda, and the 2000 Addenda, in lieu of the ''owner-defined'' general and detailed visual examination provisions in IWE–2310(a) of the 1998 Edition, the 1999 Addenda, and the 2000 Addenda. Paragraph IWE–2310(a), was revised in the 1998 Edition to require that the owner define general and detailed visual examinations. Therefore, the general and detailed visual examinations in IWE–2310(b) and IWE–2310(c) are now required by the Code to be defined by the owner. However, the revised Code provision does not provide any criteria that the licensee must use to define general and detailed visual examination requirements. Prior to the 1998 Edition, the NRC-approved provisions in IWA–2210 were used to defined the general (VT–3) and detailed (VT–1) visual examinations required by Subsection IWE. Therefore, the NRC is proposing that licensees continue to use the VT–3 and VT–1 provisions of IWA–2210 to define the general and detailed visual examinations required by IWE–2310(b) and IWE–2310(c), and continue to extend Table IWA–2210–1 maximum direct examination distance and decrease Table IWA–2210–1 minimum illumination requirements as currently stated in 10 CFR 50.55(b)(2)(ix)(B).

2.2.1.4 Bolting Acceptance Standard

The proposed modification in 10 CFR 50.55a(b)(2)(ix)(H) would require licensees to use the acceptance standard of IWC–3513 of the 1998 Edition, the 1999 Addenda, and the 2000 Addenda to evaluate flaws in pressure-retaining bolting that is greater than or equal to 51 millimeters [2.0 inches] in diameter identified during the examination of containment surfaces in lieu of the ''owner-defined'' acceptance standard of IWE–3510.1 of the 1998 Edition, the 1999 Addenda, and the 2000 Addenda. Prior to the 1998 Edition, IWE–3515.1 specified an NRC-approved acceptance standard for evaluating bolting flaws. However, the bolting acceptance standard in IWE–3515.1 was deleted in the 1998 Edition and the ''owner-defined'' acceptance standard in IWE–

3510.1 was added. The revised Code provision does not provide any criteria that the licensee must use when developing an acceptance standard for evaluating bolting flaws. The acceptance standard in IWC–3513 has been approved by the NRC for evaluating bolting flaws, and the NRC is proposing that the acceptance standard in IWC–3513 be used to evaluate flaws in containment pressure-retaining bolting that is greater than or equal to 51 millimeters [2.0 inches] in diameter.

2.2.2 Examination of Containment Bolted Connections

The proposed modification in 10 CFR 50.55a(b)(2)(ix)(I)(1) through (4) would require licensees to supplement the examination requirements for containment bolted connections in Table IWE–2500–1, Examination Category E–A, Items E1.10 and E1.11, of the 1998 Edition, the 1999 Addenda, and the 2000 Addenda with additional examination requirements. Prior to the 1998 Edition, the provisions in Table IWE–2500–1 required a VT–1 visual examination on 100 percent of the pressure-retaining bolting, as well as a torque test of each bolted connection. The provisions in the 1998 Edition, the 1999 Addenda, and the 2000 Addenda relax these requirements and state that a general visual examination of 100 percent of bolted surfaces is to be conducted during each inspection interval, without requiring the torque test of bolts. These provisions will not identify flaws or degradation in inaccessible areas, nor will the acceptance criteria for general visual examinations provide sufficient guidance for the acceptance of flaws. Therefore, the proposed modification in 10 CFR 50.55a(b)(2)(ix)(I)(1) through (4) would require that licensees supplement the examination requirements for containment bolted connections in Table IWE–2500–1, Examination Category E–A, Items E1.10 and E1.11, with the following—

- The general visual examination must include the examination of bolted connections that are disassembled at the time of a scheduled inspection.
- A detailed visual examination must be performed for areas where flaws or degradation are indicated.
- Damaged bolted connections must be disassembled and a detailed visual examination of the bolted connection components must be performed.
- If a bolted connection is disassembled at times other than a periodic (or planned) inspection and is not examined by a qualified visual examiner before reassembly, written maintenance procedures must be followed to ensure that the integrity of the reassembled bolted connection is maintained. The written procedures must include acceptance criteria for the continued use of all parts of the connection including bolts, studs, nuts, bushings, washers, threads in base material, and flange ligaments between fastener holes.

2.2.3 Acceptance Standard for Surfaces Requiring Augmented Ultrasonic Examinations

The proposed modification in 10 CFR 50.55a(b)(2)(ix)(J) would require that the ultrasonic (UT) examination acceptance standard specified in IWE–3511.3 of the 1998 Edition, the 1999 Addenda, and the 2000 Addenda for Class MC pressure-retaining components also apply to metallic liners of Class CC pressure-retaining components. The 1995 Edition applied the same UT acceptance standard to both Class MC and metallic liners of Class CC pressure-retaining components. The acceptance standard was revised in the 1995 Addenda to apply only to Class MC pressure-retaining components. A UT acceptance standard is needed for metallic liners of Class CC pressure-retaining components to evaluate conditions that are identified during an examination that may be unacceptable. Therefore, the NRC proposes to continue to use the UT acceptance standard in IWE–3511.3 for metallic liners of Class CC pressure-retaining components.

2.2.4 Containment Penetration Piping

The proposed limitation in 10 CFR 50.55a(b)(2)(xii)(A) would not allow welds in high-energy fluid system piping that are located inside a containment penetration assembly or encapsulated by a guard pipe to be exempted from examination provisions of Subsection IWC as permitted by IWC–1223 of the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda. The provisions of the Code that exempted containment penetration piping welds located inside a containment penetration assembly or encapsulated by a guard pipe from Subsection IWC examination requirements were incorporated into IWC–1223 in the 1994 Addenda. These provisions conflict with the ''break exclusion zone'' design and examination criteria developed by the NRC that are utilized for most containment penetration piping. Branch Technical Position EMEB 3–1, ''Postulated Rupture Locations in Fluid System Piping Inside and Outside Containment,'' an attachment to NRC Standard Review Plan (SRP) Section 3.6.2, ''Determination of Rupture Locations and Dynamic Effects Associated with Postulated Rupture of Piping'' (NUREG–0800), allows that breaks and cracks in high-energy fluid piping in containment penetration areas need not be postulated provided that where guard pipes are used, the enclosed portion of fluid system piping is seamless construction and without circumferential welds unless specific access provisions are made to permit inservice volumetric examination of the longitudinal and circumferential welds; and a 100 percent volumetric inservice examination of all pipe welds is conducted during each inspection interval as defined in IWA–2400 of Section XI of the ASME BPV Code.

In designs where these welds are inaccessible, relief from impractical Code requirements will continue to be granted by the NRC when appropriate bases are provided by the licensee under 10 CFR 50.55a(g)(5). The proposed limitation does not apply to moderate-energy fluid system piping. Licensees would be permitted to exempt welds in moderate-energy system piping that are located inside a containment penetration assembly or encapsulated by a guard pipe from examination in accordance with IWC–1223. The definitions of high-and moderate-energy fluid systems are contained in SRP Section 3.6.1, ''Plant Design for Protection Against Postulated Piping Failures in Fluid Systems Outside Containment'' (NUREG–0800).

The proposed limitation in 10 CFR 50.55a(b)(2)(xii)(B) would not allow piping that penetrates the containment that is connected to piping outside the scope of Section XI to be exempted from the pressure testing provisions of Subsection IWA as permitted by IWA–5110(c) of the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda. Paragraph IWA–5110(c) of the 1997 Addenda incorporated the provisions of Code Case N–522, ''Pressure Testing of Containment Penetration Piping,'' to allow piping that penetrates containment to be exempted from periodic system pressure testing when the piping and containment isolation valves perform a containment function, and the balance of the piping is not in the scope of Section XI. As discussed in the preceding paragraph, volumetric examinations of welds are no longer required for moderate-energy containment penetration piping. Therefore, pressure testing is the only practicable remaining ISI method capable of detecting through-wall leakage in the piping. Moderate-energy containment penetration piping must be

included in ISI programs that are capable of identifying any through-wall leakage. The NRC notes that containment penetration piping is required to be tested in accordance with Appendix J to 10 CFR Part 50, ''Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors.'' However, the Appendix J test requirements do not contain provisions for the detection and location of through-wall leakage in containment penetration piping.

2.2.5 Certification of Nondestructive Examination (NDE) Personnel

The proposed modification in 10 CFR 50.55a(b)(2)(xviii)(A) would require Level I and II NDE personnel and personnel qualified under the Nondestructive Testing Control Certifications Program to be recertified on a 3-year interval in lieu of the 5-year interval specified in IWA–2314 of the 1997 Addenda and the 1998 Edition, and IWA–2314(a) and IWA–2314(b) of the 1999 Addenda and the 2000 Addenda. Prior to 1997, Level I and II NDE personnel and personnel qualified under the Nondestructive Testing Control Certifications Program were recertified on a 3-year interval. Paragraph IWA–2314 of the 1997 Addenda incorporated the provisions of Code Case N–574, ''NDE Personnel Recertification Frequency,'' which increased the recertification interval from 3 years to 5 years. The proficiency of examination personnel decreases over time, and available data do not support recertification examinations at a frequency of every 5 years.

The proposed modification in 10 CFR 50.55a(b)(2)(xviii)(B) would supplement the alternative qualification provisions for VT–2 visual examination personnel in IWA–2316 of the 1998 Edition, the 1999 Addenda, and the 2000 Addenda. Paragraph IWA–2316 was added to the 1998 Edition of Section XI and incorporates the provisions of Code Case N–546, ''Alternative Requirements for Qualification of VT–2 Examination Personnel, Section XI, Division 1.'' Paragraphs IWA–2310 through IWA–2314 also provide provisions that can be used to qualify VT–2 visual examination personnel. Prior to 1998, the NRC-approved provisions in IWA–2310 through IWA–2314 were used to qualify VT–2 visual examination personnel. These provisions require that VT–2 visual examination personnel pass an initial qualification examination and periodic recertification examinations. The alternative qualification provisions for VT–2 visual examination personnel in IWA–2316 do not address initial qualification or periodic recertification examinations. Therefore, the NRC is proposing that when qualifying VT–2 visual examination personnel in accordance with IWA–2316, the proficiency of the training must be demonstrated by administering an initial qualification examination and administering recertification examinations on a 3-year interval. The implementation of IWA–2316 is applicable only to the performance of VT–2 visual examinations.

The proposed modification in 10 CFR 50.55a(b)(2)(xviii)(C) would supplement the alternative qualification provisions for VT–3 visual examination personnel in IWA–2317 of the 1998 Edition, the 1999 Addenda, and the 2000 Addenda. Paragraph IWA–2317 was added to the 1998 Edition of Section XI and applies the provisions of Code Case N–546 to the qualification of VT–3 visual examination personnel. Paragraphs IWA–2310 through IWA–2314 also provide provisions that can be used to qualify VT–3 visual examination personnel. Prior to 1998, the NRC-approved provisions in IWA–2310 through IWA–2314 were used to qualify VT–3 visual examination personnel. These provisions require that VT–3 visual examination personnel pass an initial qualification examination and periodic recertification examinations. The alternative qualification provisions for VT–3 visual examination personnel in IWA–2317 do not address initial qualification or periodic recertification examinations. Therefore, the NRC is proposing that when qualifying VT–3 visual examination personnel in accordance with IWA–2317, the proficiency of the training must be demonstrated by administering an initial qualification examination and administering recertification examinations on a 3-year interval. The implementation of IWA–2317 is applicable only to the performance of VT–3 visual examinations.

2.2.6 Substitution of Alternative Methods

The proposed limitation in 10 CFR 50.55a(b)(xix) would prohibit the use of the provision in IWA–2240 (1998 Edition, 1999 Addenda, and 2000 Addenda) and IWA–4520(c) (1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda), which allows alternative examination methods, a combination of methods, or newly developed techniques to be substituted for the methods specified in the Construction Code, provided the Authorized Nuclear Inspector (ANI) is satisfied that the results are demonstrated to be equivalent or superior to those in the Construction Code. Paragraphs IWA–2240, 1998 Edition, and IWA–4520(c), 1997 Addenda, incorporate the provisions of Code Case N–587, ''Alternative NDE Requirements for Repair/Replacement Activities.'' The NDE requirements of the Construction Code are different from those of Section XI because the objectives of the examinations differ. The NDE methods and the qualification and examination criteria of the Construction Code serve to identify fabrication-and construction-related defects in components. The NDE methods and the qualification and examination criteria specified in Section XI serve to identify service-related and age-related degradation in components after having been placed in operation. Methods, techniques, and criteria associated with construction and fabrication are not necessarily interchangeable or compatible with those of inservice inspection. Furthermore, there are examination coverage, volume, flaw acceptance, and qualification requirements related to these respective methods that are outside the scope of an ANI's responsibility. By introducing the Construction Code to paragraphs IWA–2240 and IWA–4520(c), the requirements of Section XI and the Construction Code become intertwined and the objectives of the examinations as well as the associated methods, qualifications and examination criteria become blurred. Construction Code examinations validate the integrity of the entire weld and the integrity of the fabrication material with full-volume examinations, whereas Section XI examinations validate the integrity of welds based on partial volume examinations and different criteria. These differences are not mentioned in IWA–2240 or IWA–4520(c). As a result, use of IWA–2240 and IWA–4520(c) could allow the improper application of a Section XI examination in lieu of a Construction Code examination, resulting in a component having welds whose integrity was never verified by a full volume examination. The NRC finds that IWA–2240 and IWA–4520(c) as applied to the Construction Code, are unacceptably broad and could allow unacceptable welds and components to be installed and placed in operation. Therefore, the substitution of alternative examination methods, a combination of methods, or newly developed techniques permitted by IWA–2240 and IWA–4520(c) for methods specified in the Construction Code are inappropriate.

2.2.7 System Leakage Tests

The proposed limitation in 10 CFR 50.55a(b)(2)(xx) would require that the pressure and temperature hold time requirements of IWA–5213(a) of the 1995 Edition be applied in lieu of the revised provisions of IWA–5213(a) of the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda when performing system leakage tests. The 1995 Addenda incorporates the provisions of Code Case N–498–2, ''Alternative Requirements for System Leakage Testing for Class 1, 2, and 3 Systems,'' which deleted the provisions requiring system pressure and temperature conditions to be maintained for 4 hours on insulated systems or components, or 10 minutes on noninsulated systems or components, prior to conducting system leakage tests. The 4-hour and 10-minute hold times are needed because—

(1) The capability to detect and locate a small leak is directly proportional to the hold times of a pressurized system, particularly if the system is insulated;

(2) System leakage tests, if performed without hold times, may be insensitive to small leaks because long hold times are necessary for them to become visible; and

(3) Small leaks might not be detected by any other means (such as system walkdowns, installed leak detection systems, or leakage monitoring programs).

2.2.8 Table IWB–2500–1 Examination Requirements

The proposed limitation in 10 CFR 50.55a(b)(2)(xxi)(A) would require licensees to use the provisions of Table IWB–2500–1, Examination Category B–D, Items B3.40 and B3.60 (Inspection Program A) and Items B3.120 and B3.140 (Inspection Program B) of the 1997 Addenda and 1998 Edition when using the 1999 Addenda and the 2000 Addenda. The 1999 Addenda incorporates the provisions of Code Case N–619, ''Alternative Requirements for Nozzle Inner Radius Inspections for Class 1 Pressurizer and Steam Generator Nozzles.'' Code Case N–619 eliminated the pressurizer and steam generator nozzle inside radius inspections in Table IWB–2500–1, Examination Category B–D, Items B3.40 and B3.60 (Inspection Program A) and Items B3.120 and B3.140 (Inspection Program B). Given the inservice examination data available for these components, the NRC finds there is inadequate safety basis to support the elimination of inservice examination of steam generator and pressurizer nozzle inner radii. Furthermore, the ASME Code is considering a revision to Code Case N–619 that would reinstate some alternate examination requirements. Therefore, the NRC is proposing that pressurizer and steam generator nozzle inside radius inspections be retained in ISI programs.

The proposed limitation in 10 CFR 50.55a(b)(2)(xxi)(B) would require licensees to apply the provisions of Table IWB–2500–1, Examination Category B–G–2, Item B7.80, of the 1995 Edition when using the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda. The 1995 Addenda incorporates the provisions of Code Case N–547, ''Alternative Examination Requirements for Pressure Retaining Bolting of Control Rod Drive Housings.'' Code Case N–547 deletes the examination of control rod drive (CRD) bolting whenever the CRD housing is disassembled. The examination of CRD bolting is appropriate prior to reinstallation because bending and galling of threads, and other damage to bolting, can occur when performing maintenance activities that require the removal and reinstallation of bolting. Inservice examination of bolting to be reused is appropriate in order to verify that service-related degradation of components is not occurring, and that the bolting was not damaged during the maintenance activity. Therefore, the NRC is proposing that the examination of CRD bolting be retained in ISI programs.

The proposed limitation in 10 CFR 50.55a(b)(2)(xxi)(C) would require licensees to use the provisions of Table IWB–2500–1, Examination Category B–K, Item B10.10, of the 1995 Addenda when using the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda. The 1997 Addenda incorporates the provisions of Code Case N–323–1, Alternative Examination for Welded Attachments to Pressure Vessels.'' Code Case N–323–1 permits performance of a single-side surface examination in lieu of a surface examination from both sides of the weld, whereas the 1995 Addenda requires the performance of a single-side volumetric examination of the attachment weld if surface examination from both sides of the weld is not performed. The provisions of Code Case N–323–1 do not provide a level of quality and safety equivalent to that provided in the 1995 Addenda. A single-side surface examination is not sufficient because it would not identify flaws that would be identified by a single-side volumetric examination or a surface examination from both sides of the weld.

2.2.9 Supplemental Annual Training Requirements for Ultrasonic Examiners

The proposed limitation in 10 CFR 50.55a(b)(2)(xxii) would require licensees to apply the UT examiner supplemental annual training provisions of Appendix VII, paragraph VII–4240, of the 1998 Edition when using the 1999 Addenda and the 2000 Addenda. The 1999 Addenda incorporates the provision of Code Case N–583, ''Annual Training Alternative, Section XI, Division 1.'' Code Case N–583 requires at least eight hours per year of practice of UT examination techniques by examining or by analyzing prerecorded data from material or welds containing flaws similar to those that may be encountered during inservice examination. However, the code case only provides training for techniques associated with data recording capabilities and does not provide for training using manual techniques. Hence the training alternative of Code Case N–583 is not sufficient because it is less complete than that provided by Appendix VII, paragraph VII–4240, of the 1998 Edition.

2.2.10 Underwater Welding

The proposed modification in 10 CFR 50.55a(b)(2)(xxiii) would require licensees to demonstrate the acceptability of the underwater welding method through the use of a mockup using material with similar neutron fluence levels, when welding on high neutron fluence Class 1 material underwater in accordance with IWA–4660, of the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda. The 1997 Addenda incorporates the provisions of Code Case N–516–1, ''Underwater Welding, Section XI, Division 1,'' which provides for alternative welding methods to those required by IWA–4000. The provisions of the code case are acceptable. However, due to susceptibility of cracking in high neutron irradiated steel material, the acceptability of the underwater welding method on high neutron fluence Class 1 material must be demonstrated on a mockup, using material with similar neutron fluence levels to verify that adequate crack prevention measures were used. Reactor vessel and internals are typically high neutron fluence Class 1 material. Use of a mockup is necessary because weld repairs using conventional welding techniques on in-vessel components exposed to high neutron fluences may be unsuccessful due to helium induced cracking and radiation damage, unless special welding techniques are used.

*2.3 Appendix VIII to Section XI*

The proposed rule would extend the provisions in 10 CFR 50.55a(b)(2)(xv) to the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of Appendix VIII of Section XI of the ASME BPV Code. The proposed rule would also revise 10 CFR 50.55a(b)(2)(xv)(G)(4) and 50.55a(b)(2)(xv)(K)(1)(i), as discussed in Sections 2.3.2 and 2.3.3, to update and clarify existing Appendix VIII UT examination qualification requirements. The proposed rule would also revise 10 CFR 50.55a(b)(2)(xv)(A), (A)(1), and (A)(2), and 10 CFR 50.55a(g)(6)(ii)(C)(1), and add 10 CFR 50.55a(b)(2)(xv)(M) and 50.55a(g)(6)(ii)(C)(2), as discussed in Sections 2.3.1 and 2.3.4, to clarify the coordination of Appendix VIII with other parts of Section XI.

2.3.1 Examination Coverage for Dissimilar Metal Pipe Welds

The proposed revision to 10 CFR 50.55a(b)(2)(xv)(A), (A)(1), and (A)(2), would update the UT examination coverage criteria to include examination coverage criteria for dissimilar metal piping welds when using personnel, procedures and equipment that are qualified in accordance with Supplement 10, ''Qualification Requirements for Dissimilar Metal Piping Welds,'' of Appendix VIII to Section XI. Currently, 10 CFR 50.55a(b)(2)(xv) provides the examination coverage requirements for those licensees who voluntarily choose to implement the Electric Power Research Institute (EPRI) Performance Demonstration Initiative (PDI) methodology to meet the qualification requirements of Appendix VIII to Section XI. However, 10 CFR 50.55a(b)(2)(xv) does not address the examination coverage requirements for dissimilar metal piping welds. Although examination coverage requirements for dissimilar metal piping welds are addressed in the 1989 Edition, and earlier editions and addenda of Section XI, these requirements are not addressed in later editions and addenda of Section XI. Therefore, the proposed revision to 10 CFR 50.55a(b)(2)(xv)(A), (A)(1) and (A)(2) provides examination coverage requirements for dissimilar metal piping welds that are consistent with the examination coverage requirements in the 1989 Edition and earlier editions and addenda of Section XI.

2.3.2 Reactor Vessel Single Side Examinations

The provisions in 10 CFR 50.55a(b)(2)(xv)(G)(4), which specify the same examination criteria as those contained in 10 CFR 50.55a(b)(2)(xv)(G)(3), are redundant and unnecessary and, therefore, would be deleted.

2.3.3 Qualification Test Samples

The proposed revision to 10 CFR 50.55a(b)(2)(xv)(K)(1)(i) would resolve a discrepancy between 10 CFR 50.55a(b)(2)(xv)(K)(1)(i) and 50.55a(b)(2)(xv)(K)(4). Currently, 10 CFR 50.55a(b)(2)(xv)(K)(1)(i) states that flaws that are perpendicular to the weld are not required to be included in the qualification test sample. This requirement conflicts with a provision in 10 CFR 50.55a(b)(2)(xv)(K)(4), which states that test samples must contain flaws that are perpendicular to the weld in the inner 15 percent of the weld, but that these same flaws are not required to be located in the outer 85 percent of the weld. The proposed revision to 10 CFR 50.55a(b)(2)(xv)(K)(1)(i) would clarify that flaws perpendicular to the weld located in the outer 85 percent of the weld are not required to be included in the qualification test sample.

2.3.4 Implementation of Appendix VIII to Section XI

The proposed 10 CFR 50.55a(b)(2)(xv)(M) would clarify that only the provisions in Supplement 12 to Appendix VIII that are related to the coordinated implementation of Supplement 3 to Supplement 2 performance demonstrations are required to be implemented. Supplement 12 provides provisions for coordinated implementation of selected aspects of Supplements 2, 3, 10, and 11; however, Supplement 12 does not provide provisions for the coordinated implementation of Supplement 2 or Supplement 11 performance demonstrations to Supplements 3 and 10; and does not contain guidance for implementing single-side examinations as part of the coordinating process.

The proposed revision to 10 CFR 50.55a(g)(6)(ii)(C)(1) would clarify that Appendix VIII to Section XI, 1995 Edition with the 1996 Addenda, as well as its supplements, would be required. Although the final rule that implemented Appendix VIII (64 FR 51370; September 22, 1999) requires a phased implementation of Appendix VIII over a 3-year period, the final rule addressed the implementation of the Appendix VIII supplements only and failed to mention the implementation of Appendix VIII itself. The failure to address the implementation of Appendix VIII was an oversight. The proposed revision would also eliminate Supplements 12 and 13 of Appendix VIII from the implementation schedule that is currently in 10 CFR 50.55a(g)(6)(ii)(C)(1). Supplements 12 and 13 coordinate the implementation of selected aspects of Supplements 2, 3, 4, 5, 6, 7, 10, and 11 of Appendix VIII. Since the implementation schedule for Supplements 2, 3, 4, 5, 6, 7, 10, and 11 of Appendix VIII is addressed in 10 CFR 50.55a(g)(6)(ii)(C)(1), the imposition of a mandatory implementation date for Supplements 12 and 13 is redundant.

The proposed 10 CFR 50.55a(g)(6)(ii)(C)(2) would clarify that the requirements of Appendix VIII and the supplements to Appendix VIII to Section XI, of the 1995 Edition and later editions and addenda, apply when implementing IWA–2232 of the edition and addenda of Section XI that are referenced in the ISI program Code of Record. Paragraph IWA–2232 provides the rules for conducting the UT examinations required by Section XI. Appendix VIII was introduced into Section XI in the 1989 Addenda. Before that time, Appendix VIII did not exist in the Code. As a result, IWA–2232 of the 1989 Edition and earlier editions and addenda of Section XI did not reference Appendix VIII, and therefore, the relationship between Appendix VIII and IWA–2232 is not clearly defined for those licensees who are using these earlier editions and addenda of Section XI. The final rule in 64 FR 51370 (September 22, 1999) imposed an expedited implementation of the supplements to Appendix VIII to Section XI, 1995 Edition with the 1996 Addenda, on all licensees. Therefore, the requirement to apply the provisions of Appendix VIII to Section XI, 1995 Edition or later editions and addenda, when implementing IWA–2232 is applicable to all licensees, including those licensees whose ISI programs are based on the 1989 Edition or earlier editions and addenda.

*2.4 ASME OM Code*

The proposed revision to 10 CFR 50.55a(b)(3) would incorporate by reference the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of the ASME OM Code. The proposed amendment would extend the requirements in 10 CFR 50.55a(b)(3)(ii), 50.55a(b)(3)(iii), 50.55a(b)(3)(iv), and 50.55a(b)(3)(v) to the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of the ASME OM Code. Subsections of the ASME OM Code were renumbered in the 1998 Edition; therefore, 10 CFR 50.55a(b)(3)(ii), 50.55a(b)(3)(iii), and 50.55a(b)(3)(iv) were revised and 50.55a(b)(3)(iii)(D) was added to account for the renumbering. Currently, (b)(3)(ii) references ISTC 4.2 of the 1995

Edition with the 1996 Addenda. Subsection ISTC 4.2 was renumbered to ISTC–3500 in the 1998 Edition, therefore (b)(3)(ii) is revised to reference ISTC–3500. Currently, (b)(3)(iii) references ISTC 4.3 of the 1995 Edition with the 1996 Addenda. Subsection ISTC 4.3 was renumbered to ISTC–3600 in the 1998 Edition, therefore (b)(3)(iii) is revised to reference ISTC–3600. Currently, (b)(3)(iv)((C) references ISTC 4.5.1 through 4.5.4 of the 1995 Edition with the 1996 Addenda. Paragraphs ISTC 4.5.1 through 4.5.4 were renumbered and reorganized in the 1998 Edition. These same provisions are now in ISTC–3510, ISTC–3520, ISTC–3540, and ISTC–5221 of the 1998 Edition, the 1999 Addenda, and the 2000 Addenda. Therefore, (b)(3)(iv)(D) is added to reference ISTC–3510, ISTC–3520, ISTC–3540, and ISTC–5221, and (b)(3)(iv) is revised to require that (b)(3)(iv)(D) be used in lieu of (b)(3)(iv)(C) when using the 1998 Edition, the 1999 Addenda, and the 2000 Addenda.

The proposed modification in 10 CFR 50.55a(b)(3)(vi) would require an exercise interval of 2 years for manual valves within the scope of the ASME OM Code in lieu of the exercise interval of 5 years specified in the 1999 Addenda and the 2000 Addenda of the ASME OM Code. The 1998 Edition of the ASME OM Code (and previous Code editions and addenda) specified an exercise interval of 3 months for manual valves within the scope of the Code. The 1999 Addenda to the ASME OM Code revised ISTC–3540 to extend the exercise frequency for manual valves to 5 years, provided that adverse conditions do not require more frequent testing. The NRC does not consider that sufficient justification exists at this time to allow the significant extension of the exercise interval for manual valves from 3 months to 5 years. Operating experience has revealed that a manual valve can become incapable of operating when not exercised or maintained over a long period of time. See, for example, NRC Information Notice 86–61 (July 28, 1986), ''Failure of Auxiliary Feedwater Manual Isolation Valve.'' The general provision in the 1999 Addenda and the 2000 Addenda of the ASME OM Code regarding the absence of adverse conditions does not provide adequate guidance to allow a Code user to determine that a manual valve can remain idle for 5 years without adversely impacting its operating capability. The modification to the ASME OM Code in this proposed rule allows a significant relaxation of the exercising requirement for manual valves. Further, the proposed rule specifies an exercise interval for manual valves within the scope of the ASME OM Code consistent with the time period for general experience with the operation of plant equipment over a refueling cycle.

**3. Section-by-Section Analysis of Substantive Changes**

*Paragraph (b)(1).* The proposed revision would incorporate by reference the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of Division 1 of Section III of the ASME BPV Code. New applicants for a nuclear power plant submitting an application for a construction permit under 10 CFR Part 50 or design certification under 10 CFR Part 52 would be required to use the 1998 Edition up to and including the 2000 Addenda for the design and construction of the reactor coolant pressure boundary and Quality Group B and C components.

*Paragraph (b)(1)(ii).* The proposed revision would extend the limitation on weld leg dimension requirements to the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of Section III of the ASME BPV Code. Applicants and licensees using these Edition and Addenda would not be able to apply paragraph NB–3683.4(c)(1), Footnote 11 to Figure NC–3673.2(b)–1, and Figure ND–3673.2(b)–1.

*Paragraph (b)(1)(iii).* The proposed revision would extend the limitation on seismic design requirements to the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of Section III of the ASME BPV Code. Applicants and licensees using these edition and addenda would not be able to use Articles NB–3200, NB–3600, NC–3600, and ND–3600.

*Paragraph (b)(1)(v).* The proposed revision would extend the limitation on independence of inspection requirements to the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of Section III of the ASME BPV Code. Applicants and licensees using these edition and addenda would not be able to apply Sub-subparagraph NCA–4134.10(a).

*Paragraph (b)(2).* The proposed revision would incorporate by reference the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of Division 1 of Section XI of the ASME BPV Code. Licensees of nuclear power plants would be required to use the 1998 Edition up to and including the 2000 Addenda when updating their ISI programs in their subsequent 120-month interval under 10 CFR 50.55a(g)(4).

*Paragraph (b)(2)(viii).* The proposed revision would extend the existing modification in paragraph (b)(2)(viii)(E) on concrete containment examination requirements to the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of Section XI of the ASME BPV Code and clarifies that the new modification in paragraph (b)(2)(viii)(F) would apply only to the 1998 Edition with the 1999 Addenda and the 2000 Addenda.

*Paragraph (2)(viii)(F).* The proposed modification would require that personnel who perform visual inspections of containment surfaces and tendon anchorage hardware, wires, or strands be qualified in accordance with IWA–2300 in lieu of the ''owner-defined'' personnel qualification provision in IWE–2310(d).

*Paragraph (b)(2)(ix).* The proposed revision would clarify that the existing modifications in paragraphs (b)(2)(ix)(A) through (E) of this section on examination of metal containments and liners of Class CC components apply to Subsection IWE, 1992 Edition with the 1992 Addenda or the 1995 Edition with the 1996 Addenda. It would also extend the modifications in paragraphs (b)(2)(ix)(A) and (b)(2)(ix)(B) to the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of Section XI of the ASME BPV Code, and clarifies that the new proposed modifications in paragraphs (b)(2)(ix)(F) through (J) would apply only to the 1998 Edition with the 1999 Addenda and 2000 Addenda.

*Paragraph (b)(2)(ix)(F).* The proposed modification would require that personnel who perform visual inspections of containment surfaces be qualified in accordance with IWA–2300 in lieu of the ''owner-defined'' personnel qualification provision in IWE–2330(a).

*Paragraph (b)(2)(ix)(G).* The proposed modification would require that the general and detailed visual examinations specified in IWE–2310(b) and IWE–2310(c) meet the VT–3 and VT–1 examination provisions in IWA–2210 in lieu of the ''owner-defined'' general and detailed visual examination provisions in IWE–2310(a).

*Paragraph (b)(2)(ix)(H).* The proposed modification would require the use of the acceptance standard in IWC–3513 to evaluate flaws in pressure-retaining bolting identified during the examination of containment surfaces, in lieu of the ''owner-defined'' acceptance standard of IWE–3510.1.

*Paragraph (b)(2)(ix)(I)(1) through (4).* The proposed modification would supplement the examination requirements for containment bolted connections that are in Table IWE–2500–1, Examination Category E–A, Items E1.10 and E1.11.

*Paragraph (b)(2)(ix)(J).* The proposed modification would require that the UT examination acceptance standard specified in IWE–3511.3 for Class MC pressure-retaining components also apply to metallic liners of Class CC pressure-retaining components.

*Paragraph (b)(2)(xi).* The proposed revision would extend the limitation on Class 1 piping exempted from ISI requirements to the 1997 Addenda, 1998 Edition, the 1999 Addenda, and the 2000 Addenda of Section XI of the ASME BPV Code. Licensees using this edition and these addenda would be required to use IWB–1220 from the 1989 Edition.

*Paragraph (b)(2)(xii)(A).* The proposed limitation would not allow welds in high-energy fluid system piping that are located inside a containment penetration assembly or encapsulated by a guard pipe to be exempted from the examination provisions of Subsection IWC as permitted by IWC–1223. In designs where these welds are inaccessible, relief from impractical Code requirements will continue to be granted by the NRC when appropriate bases are provided by the licensee pursuant to 10 CFR 50.55a(g)(5). The proposed limitation would not apply to moderate-energy fluid system piping. Licensees would be permitted to exempt welds in moderate-energy system piping that are located inside a containment penetration assembly or encapsulated by a guard pipe from examination in accordance with IWC–1223.

*Paragraph (b)(2)(xii)(B).* The proposed limitation would not allow containment penetration piping that is connected to piping outside the scope of Section XI to be exempted from the pressure test provisions of Subsection IWA as permitted by IWA–5110(c) of the 1997 Addenda, the 1998 Edition, 1999 Addenda, and 2000 Addenda.

*Paragraph (b)(2)(xv).* The proposed revision would extend the modifications to Appendix VIII specimen set and qualification requirements to the 1997 Addenda, 1998 Edition, the 1999 Addenda, and the 2000 Addenda of Section XI of the ASME BPV Code. Licensees choosing to use these modifications would be required to apply all the modifications under paragraph (b)(2)(xv) except for those in (b)(2)(xv)(F) which are optional.

*Paragraphs (b)(2)(xv)(A), (A)(1), and (A)(2).* The proposed revision would update the UT examination coverage criteria to include examination coverage criteria for dissimilar metal piping welds when using personnel, procedures and equipment that are qualified in accordance with Supplement 10 of Appendix VII to Section XI. Licensees are currently performing examinations of dissimilar metal piping welds in accordance with the requirements of the edition and addenda of Section XI of the ASME BPV Code applicable to their respective ISI programs, and are required to do so until November 22, 2002. At that time, licensees would be required to implement the dissimilar metal piping weld qualification requirements of Supplement 10 of Appendix VIII. On that date, and thereafter, licensees would no longer be permitted to examine dissimilar metal piping welds in accordance with the requirements of Section XI of the edition and addenda of the ASME BPV Code applicable to their respective ISI programs.

*Paragraph (b)(2)(xv)(G)(4).* The proposed revision would delete paragraph (b)(2)(xv)(G)(4). This requirement is redundant with the requirement in paragraph (b)(2)(xv)(G)(3) and is unnecessary. As a result, this revision involves no substantive change.

*Paragraph (b)(2)(xv)(K)(1)(i).* The proposed revision would clarify that flaws perpendicular to the weld located in the outer 85 percent of the weld are not required to be included in the qualification test sample. The proposed revision neither increases nor decreases current requirements, but would clarify conflicting requirements that currently exist.

*Paragraph (b)(2)(xv)(M).* The proposed revision would clarify that only the provisions in Supplement 12 to Appendix VIII that are related to the coordinated implementation of Supplement 3 to Supplement 2 performance demonstrations are required to be implemented.

*Paragraph (b)(2)(xvii).* The proposed revision would extend the limitation on reconciliation of quality requirements to the 1997 Addenda, 1998 Edition, the 1999 Addenda, and the 2000 Addenda of Section XI of the ASME BPV Code. Licensees using IWA–4200 of this edition and these addenda would be required to procure replacement and repair items under its approved quality assurance program required by 10 CFR Part 50, Appendix B. The limitation would not permit licensees to use IWA–4200 to procure repair and replacement items to be used in ASME Code safety-related applications that are manufactured under a non-nuclear code or non-nuclear standard without an approved quality assurance program.

*Paragraph (b)(2)(xviii)(A).* The proposed modification would require that Level I and II NDE personnel and personnel qualified under the Nondestructive Testing Control Certifications Program be recertified on a 3-year interval in lieu of the 5-year interval specified in IWA–2314.

*Paragraph (b)(2)(xviii)(B).* The proposed modification would require that when qualifying VT–2 examination personnel in accordance with IWA–2316, the proficiency of the training required under IWA–2316 must be demonstrated by administering initial qualification and recertification examinations. The implementation of IWA–2316 is only applicable to the performance of VT–2 visual examinations.

*Paragraph (b)(2)(xviii)(C).* The proposed modification would require that when qualifying VT–3 examination personnel in accordance with IWA–2317, the proficiency of the training required under IWA–2317 must be demonstrated by administering initial qualification and recertification examinations. The implementation of IWA–2317 is only applicable to the performance of VT–3 visual examinations.

*Paragraph (b)(2)(xix).* The proposed limitation would prohibit the use of the provisions in IWA–2240 and IWA–4520(c) which would allow alternative examination methods, a combination of methods, or newly developed techniques to be substituted for the methods specified in the Construction Code during repair and replacement activities.

*Paragraph (b)(2)(xx).* The proposed limitation would require that the system leakage test pressure and temperature hold time requirements of IWA–5213(a) of the 1995 Edition of Section XI be retained in ISI programs when using the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of Section XI. A 10-minute hold time for non-insulated systems and components or 4-hour hold time for insulated systems and components would be required after attaining system operating pressure.

*Paragraph (b)(2)(xxi)(A).* The proposed limitation would require that pressurizer and steam generator nozzle inside-radius inspections be retained in ISI programs. Licensees would not be allowed to eliminate the pressurizer and steam generator nozzle inside-radius inspections of Table IWB–2500–1, Examination Category B–D, Items B3.40 and B3.60 (Inspection Program A) and Items B3.120 and B3.140 (Inspection Program B) as allowed by the 1999 Addenda and the 2000 Addenda of Section XI.

*Paragraph (b)(2)(xxi)(B).* The proposed limitation would require that the CRD bolting examinations of Table IWB–2500–1, Examination Category B–

G–2, Item B7.80, of the 1995 Addenda of Section XI be retained in ISI programs when using the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of Section XI.

*Paragraph (b)(2)(xxi)(C).* The proposed limitation would require that the attachment weld single-side volumetric examination of Table IWB–2500–1, Examination Category B–K, Item B10.10, of the 1995 Addenda of Section XI be retained in ISI programs when using the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of Section XI.

*Paragraph (b)(2)(xxii).* The proposed limitation would not allow the use of the revised supplemental annual training requirements for UT examiners in Appendix VII, paragraph VII–4240, of the 1999 Addenda and 2000 Addenda of Section XI. Licensees would be required to use the requirements in Appendix VII, paragraph VII–4240, of the 1998 Edition.

*Paragraph (b)(2)(xxiii).* The proposed modification would require that the acceptability of underwater welding methods be demonstrated through the use of a mockup, when welding high neutron fluence Class 1 material underwater in accordance with IWA–4660 of Section XI.

*Paragraph (b)(3).* The proposed revision would incorporate by reference the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of the ASME OM Code. Licensees of nuclear power plants would be required to use the 1998 Edition up to and including the 2000 Addenda when updating their inservice testing programs in their subsequent 120-month interval under 10 CFR 50.55a(f)(4).

*Paragraph (b)(3)(ii).* The proposed revision would extend the modification to motor-operated valve stroke-time testing requirements to the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of the ASME OM Code, reconciling those subsections of the ASME OM Code that were renumbered in the 1998 Edition. Licensees using this edition and these addenda would be required to establish a program to ensure that MOVs continue to be capable of performing their design basis safety functions.

*Paragraph (b)(3)(iii).* The proposed revision would extend the modification on Code Case OMN–1 to the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of the ASME OM Code, reconciling those subsections of the ASME OM Code that were renumbered in the 1998 Edition. The modification would continue to allow, as a voluntary alternative, licensees to use Code Case OMN–1 in lieu of the stroke-time testing requirements of paragraph (b)(3)(ii) when using this edition and these addenda.

*Paragraph (b)(3)(iv).* The proposed revision would extend the modifications in paragraphs (b)(3)(iv)(A), (B), and (C) on check valve condition monitoring requirements to the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of the ASME OM Code. There would be no substantive changes in the requirements, but rather they would be revised to reconcile the different subsection and paragraph numbers of the ASME OM Code that were renumbered in the 1998 Edition.

*Paragraph (b)(3)(iv)(D).* The proposed paragraph would not change requirements, but would rather reconcile, for the existing modification, the different subsection and paragraph numbers of the ASME OM Code that were renumbered in the 1998 Edition.

*Paragraph (b)(3)(v).* The proposed revision would extend the snubber ISI requirements to the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of the ASME OM Code.

*Paragraph (b)(3)(vi).* The proposed modification would require an exercise interval of 2 years for manual valves within the scope of the ASME OM Code in lieu of the exercise interval of 5 years specified in the 1999 Addenda and the 2000 Addenda of the ASME OM Code.

*Paragraphs (g)(6)(ii)(B)(1) through (4).* The proposed revision would delete the containment examination requirements in 10 CFR 50.55a(g)(6)(ii)(B)(1) through (4) because the implementation dates have expired and all licensees have completed their first containment inservice inspection requirements by that time or have been approved by an exemption for a delay; would add a new 10 CFR 50.55a(g)(6)(ii)(B)(1) to clarify that the start date of the first 120-month interval for the ISI of Class MC and Class CC components must coincide with the start of the first containment inspection; and would redesignate 10 CFR 50.55a(g)(6)(ii)(B)(5) as 10 CFR 50.55a(g)(6)(ii)(B)(2).

*Paragraph (g)(6)(ii)(C)(1).* The proposed revision would clarify that Appendix VIII to Section XI, 1995 Edition with the 1996 Addenda, as well as its supplements, would be required, and would also eliminate Supplements 12 and 13 of Appendix VIII from the implementation schedule.

*Paragraph (g)(6)(ii)(C)(2).* The proposed paragraph would clarify the requirements of Appendix VIII and the supplements to Appendix VIII to Section XI when implementing IWA–2232 of Section XI.

**4. Withdrawal of a Proposed Rule To Eliminate 120-Month Update**

On December 3, 1997 (62 FR 63892), NRC published a proposed rule to incorporate by reference in 10 CFR 50.55a the 1989 Addenda, 1990 Addenda, 1991 Addenda, 1992 Edition, 1992 Addenda, 1993 Addenda, 1994 Addenda, 1995 Edition, 1995 Addenda, and 1996 Addenda of Section III, Division 1 and Section XI, Division 1 of the ASME BPV Code; and the 1995 Edition and 1996 Addenda of the ASME OM Code. The statements of consideration for the proposed rule noted that the Commission was considering a change to the 120-month update requirements of 10 CFR 50.55a for ISI/IST programs. Several public comments were received on this issue, and as a result, the NRC issued a supplement to the December 1997 proposed rule on April 27, 1999 (64 FR 22580), that proposed to eliminate the requirement for licensees to update their ISI and IST programs beyond a baseline edition and addenda of the ASME BPV Code. The NRC staff held a public workshop on May 27, 1999, to discuss the 120-month ISI/IST update requirement. The final rule that incorporated by reference later editions and addenda of the ASME Code published on September 22, 1999 (64 FR 51370), stated that the Commission would consider elimination of the 120-month update requirement in a separate rulemaking. The Commission disapproved the elimination of the 120-month update requirement in an SRM dated April 13, 2000, because the ASME Codes are subject to continuing refinement and improvement and it would be inappropriate to freeze these still evolving requirements. Therefore, the Commission is withdrawing the proposed rule published on April 27, 1999 (64 FR 22580).

**5. Draft Generic Aging Lessons Learned Report**

On August 31, 2000 (65 FR 53047), the NRC issued a draft Generic Aging Lessons Learned (GALL) report for public comment. The draft GALL report evaluates existing generic programs, documents the basis for determining when generic existing programs are adequate without change, and documents when generic existing programs should be augmented for licensee renewal. Section XI, Division 1, of the ASME BPV Code is one of the generic existing programs in the draft GALL report that is evaluated as an aging management program for license renewal. Subsections IWB, IWC, IWD, and IWF of the 1989 Edition of Section

XI of the ASME BPV Code for ISI and the 1992 Edition of Subsections IWE and IWL of Section XI of the ASME BPV Code for ISI were evaluated in the draft GALL report. Changes between the 1989 and 1995 Editions of Section XI of the ASME BPV Code were also reviewed, and the conclusions in the draft GALL report remain valid for the 1995 Edition of Section XI of the ASME BPV Code.

In the draft Gall Report, Sections XI.M1, ''ASME Section XI Inservice Inspection, Subsections IWB, IWC, and IWD,'' XI.S1, ''ASME Section XI, Subsection IWE,'' XI.S2, ''ASME Section XI, Subsection IWL,'' and XI.S3, ''ASME Section XI, Subsection IWF,'' describe the evaluation and technical basis for determining the adequacy of Subsections IWB, IWC, IWD, IWE, IWF and IWL. A 10-element program with such attributes as scope of program, preventive actions, parameters monitored/inspected, detection of aging effects, monitoring and trending, acceptance criteria, corrective actions, confirmation process, administrative controls, and operating experience was used to perform the evaluation.

The NRC has completed an evaluation of Subsections IWB, IWC, IWD, IWE, IWF, and IWL of Section XI of the ASME BPV Code, 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda, as part of the 10 CFR 50.55a amendment process to ensure that the conclusions of the draft GALL report remain valid. Although some of the revisions in Section XI of the ASME BPV Code relax the provisions of the 1995 Edition, the revisions are acceptable and the conclusions of the draft GALL report remain valid. However, several of the revisions to Subsections IWA, IWB, IWE, and IWL that are discussed in the preceding Section 2, might affect the validity of the conclusions in the draft GALL report because provisions in the 1995 Edition that address examination requirements, acceptance standards, and leakage tests for Class 1, 2, CC, and MC components are significantly relaxed or eliminated in the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda. The proposed limitations and modifications, 50.55a(b)(2)(ix)(G), 50.55a(b)(2)(ix)(H), 50.55a(b)(2)(ix)(I), 50.55a(b)(2)(ix)(J), 50.55a(b)(2)(xii)(B), 50.55a(b)(2)(xix), 50.55a(b)(2)(xx), and 50.55a(b)(2)(xxi) which are further discussed in the preceding Section 2, would require that the revised provisions be supplemented with additional inspection requirements or would prohibit the use of the revised provisions. The conclusions of the draft GALL report remain valid for the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of Section XI of the ASME BPV Code with use of the proposed limitations and modifications presented in this proposed rulemaking. However, the NRC would impose these limitations and modifications to ensure consistency in the examination requirements, acceptance standards, and leakage tests, and not solely to validate the conclusions in the draft GALL report.

**6. Availability of Documents**

The NRC is making the documents identified below available to interested persons through one or more of the following methods as indicated.

*Public Document Room (PDR).* The NRC Public Document Room is located at 11555 Rockville Pike, Rockville, Maryland.

*Rulemaking Website (Web).* The NRC's interactive rulemaking Website is located at *http://ruleforum.llnl.gov.* These documents may be viewed and downloaded electronically via this Website.

*NRC's Public Electronic Reading Room (PERR).* The NRC's public electronic reading room is located at *http://www.nrc.gov/NRC/ADAMS/index.html.*

*NRC Staff Contact (NRC Staff).* Single copies of the **Federal Register** Notice, Regulatory Analysis, and Environmental Assessment may be obtained from Stephen Tingen, Division of Engineering, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001. Alternatively, you may contact Mr. Tingen at (301) 415–1280, or via e-mail at: *sgt@nrc.gov.*

| Document | PDR | Web | PERR | NRC staff |
|---|---|---|---|---|
| FEDERAL REGISTER Notice | X | X | (ML011970223) | X |
| Regulatory Analysis | X | X | (ML011970231) | X |
| Environmental Assessment | X | X | (ML011970235) | X |

**7. Plain Language**

The Presidential memorandum dated June 1, 1998, entitled, ''Plain Language in Government Writing,'' directed that the Federal government's writing must be in plain language. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. ATTN: Rulemaking and Adjudications Staff. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland, 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

**8. Voluntary Consensus Standards**

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires agencies to use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or is otherwise impractical. The NRC is amending its regulations to incorporate by reference a later edition and addenda of Sections III and XI of the ASME BPV Code and ASME OM Code, for construction, ISI, and IST of nuclear power plant components as identified in the preceding Section 2.

In an SRM dated September 10, 1999, the Commission directed the NRC staff to identify all portions of an adopted voluntary consensus standard which are not adopted by the staff and to provide a justification for not adopting such portions. The portions of the ASME BPV Code and OM Code which the staff is proposing not to adopt, or to partially adopt, are identified in Section 2 of the preceding section.

In accordance with the National Technology Transfer and Advancement Act of 1995 and Office of Management and Budget (OMB) Circular A–119, the NRC is requesting public comment regarding whether other national or international consensus standards could be endorsed as an alternative to the ASME BPV Code and the ASME OM Code.

**9. Finding of No Significant Environmental Impact: Availability**

The Commission has determined, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality

of the human environment, and therefore, an environmental impact statement is not required.

The proposed rulemaking will not significantly increase the probability or consequences of accidents; no changes are being made in the types of any effluents that may be released off-site; there is a decrease in occupational exposure; and there is no significant increase in public radiation exposure. Therefore, there are not significant radiological impacts associated with the proposed action. The proposed rulemaking does not involve non-radiological plant effluents and has no other environmental impact. Therefore, no significant non-radiological impacts are associated with the proposed action.

The determination of this environmental assessment is that there will be no significant offsite impact to the public from this action. However, the general public should note that the NRC is seeking public participation. Comments on any aspect of the environmental assessment may be submitted to the NRC as indicated by under the **ADDRESSES** heading.

Section 6 in the preceding section of this notice describes how to obtain a copy the draft environmental assessment. The Commission requests public comment on the draft environmental assessment and comments may be submitted to the NRC as indicated under the **ADDRESSES** heading.

The NRC has sent a copy of the environmental assessment and this proposed rule to every State Liaison Officer and requested their comments on the environmental assessment.

## 10. Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This proposed rule has been submitted to OMB for review and approval of the information collection requirements.

The burden to the public for these information collections is estimated to average 67 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. The NRC is seeking public comment on the potential impact of the information collections contained in the proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden 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?

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden, to the Records Management Branch (T–6 E6), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011), Office of Management and Budget, Washington, DC 20503.

Comments to OMB on the information collections or on the above issues should be submitted by September 4, 2001. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

*Public Protection Notification*

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

## 11. Regulatory Analysis

The NRC has prepared a draft regulatory analysis on this proposed rule. The draft analysis is available for review in the NRC's Public Document Room, located in One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Section 6 in the preceding section of this notice describes how to obtain a copy of the draft regulatory analysis. The Commission requests public comment on the draft analysis and comments may be submitted to the NRC as indicated under the **ADDRESSES** heading.

## 12. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this proposed amendment will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed amendment affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of small entities set forth in the Regulatory Flexibility Act or the Small Business Size Standards set forth in regulations issued by the Small Business Administration at 13 CFR part 121.

## 13. Backfit Analysis

The NRC's regulations in 10 CFR 50.55a require nuclear power plant licensees to construct Class 1, 2, and 3 components in accordance with the rules provided in Section III, Division 1, of the ASME BPV Code; inspect Class 1, 2, 3, Class MC, and Class CC components in accordance with the rules provided in Section XI, Division 1, of the ASME BPV Code; and test Class 1, 2, and 3 pumps and valves in accordance with the rules provided in the ASME OM Code. The proposed rule incorporates by reference the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of Section III, Division 1, of the ASME BPV Code; Section XI, Division 1, of the ASME BPV Code; and the ASME OM Code.

The NRC's regulations require licensees to revise their ISI and IST programs every 120 months to the edition and addenda of Section XI of the ASME BPV Code and the ASME OM Code incorporated by reference into 10 CFR 50.55a that is in effect 12 months prior to the start of a new 120-month interval. The regulation in 10 CFR 50.109 does not ordinarily require a backfit analysis for routine amendments to 10 CFR 50.55a. The bases for the NRC position are that—

(1) Section III, Division 1, applies only to new construction (i.e., the edition and addenda to be used in constructing a plant are selected on the basis of the date of the construction permit, and are not changed thereafter, except voluntarily by the licensee);

(2) Licensees understand that 10 CFR 50.55a requires that they revise their ISI and IST programs every 120 months to the latest edition and addenda of the ASME Code that were incorporated by reference in 10 CFR 50.55a and in effect 12 months before the start of the next inspection interval; and

(3) The ASME Code is a national consensus standard developed by participants with broad and varied interests, in which all interested parties (including the NRC and utilities) participate.

This consideration is consistent with both the intent and spirit of the Backfit Rule (i.e., the NRC provides for the protection of the public health and safety, and does not unilaterally impose undue burden on applicants or licensees).

In the proposed revision to 10 CFR 50.55a(b)(2)(xv)(A), (A)(1) and (A)(2) that is discussed in the preceding Section 2.3.1, the Commission is adopting dissimilar metal piping weld examination coverage requirements. These requirements, although contained in the 1989 Edition, and earlier editions and addenda of Section XI of the ASME Code, are not addressed in later editions and addenda of Section XI. The Commission concludes that the addition of dissimilar metal piping weld examination coverage requirements to the regulation is necessary to correct the omission by the ASME Code to ensure adequate protection of public health and safety.

**List of Subjects in 10 CFR Part 50**

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, 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. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 50.

## PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 is revised to read as follows:

**Authority:** Sections 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Section 50.55a is amended by:

(a) Removing paragraphs (b)(2)(xv)(G)(4), (g)(6)(ii)(B)(3), and (g)(6)(ii)(B)(4);

(b) Redesignating and revising paragraph (g)(6)(ii)(B)(5) as (g)(6)(ii)(B)(2);

(c) Revising the introductory text of paragraph (b)(1), paragraphs (b)(1)(ii), (b)(1)(iii), and (b)(1)(v), the introductory text of paragraphs (b)(2), (b)(2)(viii), and (b)(2)(ix), paragraph (b)(2)(xi), the introductory text of paragraph (b)(2)(xv), paragraphs (b)(2)(xv)(A), (b)(2)(xv)(K)(1)(i), and (b)(2)(xvii), the introductory text of paragraph (b)(3), paragraph (b)(3)(ii), the introductory text of paragraphs (b)(3)(iii) and (b)(3)(iv), and paragraphs (b)(3)(v), (g)(6)(ii)(B)(1), and (g)(6)(ii)(C)(1);and

(d) Adding paragraphs (b)(2)(viii)(F), (b)(2)(ix)(F) through (b)(2)(ix)(J), (b)(2)(xii), (b)(2)(xv)(M), (b)(2)(xviii) through (b)(2)(xxiii), (b)(3)(iv)(D), (b)(3)(vi), and (g)(6)(ii)(C)(2).

**§ 50.55a Codes and standards.**

* * * * *

(b) * * *

(1) As used in this section, references to Section III of the ASME Boiler and Pressure Vessel Code refer to Section III, Division 1, and include editions through the 1998 Edition and addenda through the 2000 Addenda, subject to the following limitations and modifications:

* * * * *

(ii) Weld leg dimensions. When applying the 1989 Addenda through the latest editions and addenda incorporated by reference in paragraph (b)(1) of this section, licensees may not apply paragraph NB–3683.4(c)(1), Footnote 11 to Figure NC–3673.2(b)–1, and Figure ND–3673.2(b)–1.

(iii) Seismic design. Licensees may use Articles NB–3200, NB–3600, NC–3600, and ND–3600 up to and including the 1993 Addenda, subject to the limitation specified in paragraph (b)(1)(ii) of this section. Licensees may not use these Articles in the 1994 Addenda through the latest editions and addenda incorporated by reference in paragraph (b)(1) of this section.

* * * * *

(v) Independence of inspection. Licensees may not apply NCA–4134.10(a) of Section III, 1995 Edition through the latest editions and addenda incorporated by reference in paragraph (b)(1) of this section.

(2) As used in this section, references to Section XI of the ASME Boiler and Pressure Vessel Code refer to Section XI, Division 1, and include editions through the 1998 Edition and addenda through the 2000 Addenda, subject to the following limitations and modifications:

* * * * *

(viii) Examination of concrete containments. Licensees applying Subsection IWL, 1992 Edition with the 1992 Addenda, shall apply paragraphs (b)(2)(viii)(A) through (b)(2)(viii)(E) of this section. Licensees applying the 1995 Edition with the 1996 Addenda shall apply paragraphs (b)(2)(viii)(A), (b)(2)(viii)(D)(3), and (b)(2)(viii)(E) of this section. Licensees applying the 1998 Edition with the 1999 and 2000 Addenda shall apply paragraphs (b)(2)(viii)(E) and (b)(2)(viii)(F) of this section.

* * * * *

(F) Qualification provisions for personnel that examine containment concrete surfaces and tendon hardware, wires, or strands must be in accordance with IWA–2300 in lieu of ''owner-defined'' personnel qualification provisions in IWL–2310(d).

(ix) Examination of metal containments and the liners of concrete containments. Licensees applying Subsection IWE, 1992 Edition with the 1992 Addenda, or the 1995 Edition with the 1996 Addenda, shall satisfy the requirements of paragraphs (b)(2)(ix)(A) through (b)(2)(ix)(E) of this section. Licensees applying the 1998 Edition with the 1999 Addenda and 2000 Addenda shall only satisfy the requirements of paragraphs (b)(2)(ix)(A), (b)(2)(ix)(B), (b)(2)(ix)(F) through (b)(2)(ix)(J) of this section.

* * * * *

(F) Qualification provisions for personnel who conduct visual examinations of containment surfaces must be in accordance with IWA–2300 in lieu of ''owner-defined'' personnel qualification provisions of IWE–2330(a).

(G) The general and detailed visual examinations required by IWE–2310(b) and IWE–2310(c) must meet the VT–3 and VT–1 examination provisions of IWA–2210 in lieu of the ''owner-defined'' general and detailed visual examination provisions in IWE–2310(a). Table IWA–2210–1 maximum direct examination distance may be extended and Table IWA–2210–1 minimum illumination requirements may be decreased as permitted by (b)(2)(ix)(B) of this section.

(H) The acceptance standard of IWC–3513 must be used to evaluate flaws in pressure-retaining bolting that is greater than or equal to 51 millimeters [2 inches] in diameter identified during the examination of containment surfaces in lieu of the ''owner-defined'' acceptance standard in IWE–3510.1.

(I) The examination provisions for containment bolted connections contained in Table IWE–2500–1, Examination Category E–A, Containment Surfaces, Items E1.10 and E1.11, must be supplemented with the following examination requirements:

(1) The general visual examination must include the examination of bolted connections that are disassembled at the time of a scheduled inspection.

(2) A detailed visual examination must be performed for areas where flaws or degradation are indicated.

(3) Damaged bolted connections must be disassembled, and a detailed visual examination of the bolted connection components must be performed.

(4) If a bolted connection is disassembled at times other than a periodic (or planned) inspection and is not examined by a qualified visual examiner before reassembly, written maintenance procedures must be followed to ensure that the integrity of the reassembled bolted connection is maintained. The written procedures must include acceptance criteria for the continued use of all parts of the connection including bolts, studs, nuts, bushings, washers, threads in base material, and flange ligaments between fastener holes.

(J) The ultrasonic examination acceptance standard specified in IWE–3511.3 for Class MC pressure-retaining components must also be applied to metallic liners of Class CC pressure-retaining components.

* * * * *

(xi) Class 1 piping. Licensees may not apply IWB–1220, ''Components Exempt from Examination,'' of Section XI, 1989 Addenda through the latest editions and addenda incorporated by reference in paragraph (b)(2) of this section, and shall apply IWB–1220, 1989 Edition.

(xii) Containment penetration piping.

(A) Welds in high-energy fluid system containment penetration piping located inside a containment penetration assembly or encapsulated by a guard pipe are not exempt from the examination provisions of Subsection IWC as permitted by IWC–1223 of the 1997 Addenda through the latest editions and addenda incorporated by reference in paragraph (b)(2) of this section.

(B) Piping that penetrates the containment that is connected to piping that is outside the scope of Section XI is not exempt from the pressure testing provisions of Subsection IWA as permitted by IWA–5110(c) of the 1997 Addenda through the latest editions and addenda incorporated by reference in paragraph (b)(2) of this section.

* * * * *

(xv) Appendix VIII specimen set and qualification requirements. The following provisions may be used to modify implementation of Appendix VIII of Section XI, 1995 Edition through the latest editions and addenda incorporated by reference in paragraph (b)(2) of this section. Licensees choosing to apply these provisions shall apply all of the following provisions under this subparagraph except for those in § 50.55a(b)(2)(xv)(F) which are optional.

(A) When applying Supplements 2, 3, and 10 to Appendix VIII, the following examination coverage criteria requirements must be used:

(1) Piping must be examined in two axial directions, and when examination in the circumferential direction is required, the circumferential examination must be performed in two directions, provided access is available. Dissimilar metal welds must be examined axially and circumferentially.

(2) Where examination from both sides is not possible, full coverage credit may be claimed from a single side for ferritic welds. Where examination from both sides is not possible on austenitic welds or dissimilar metal welds, full coverage credit from a single side may be claimed only after completing a successful single-sided Appendix VIII demonstration using flaws on the opposite side of the weld. Dissimilar metal welds must be examined from the side that is of the same base metal material as that from which qualification was demonstrated.

* * * * *

(K) * * *

(1) * * *

(i) For detection, a minimum of four flaws in one or more full-scale nozzle mock-ups must be added to the test set. The specimens must comply with Supplement 6, paragraph 1.1, to Appendix VIII, except for flaw locations specified in Table VIII S6–1. Flaws may be either notches, fabrication flaws or cracks. Seventy-five percent of the flaws must be cracks or fabrication flaws. Flaw locations and orientations must be selected from the choices shown in § 50.55a(b)(2)(xv)(K)(4), Table VIII–S7–1–Modified, with the exception that flaws in the outer 85 percent of the weld need not be perpendicular to the weld. There may be no more than two flaws from each category, and at least one subsurface flaw must be included.

* * * * *

(M) When implementing Supplement 12 to Appendix VIII, only the provisions related to the coordinated implementation of Supplement 3 to Supplement 2 performance demonstrations are required.

* * * * *

(xvii) Reconciliation of Quality Requirements. When purchasing replacement items, in addition to the reconciliation provisions of IWA–4200, 1995 Edition through the latest editions and addenda incorporated by reference in paragraph (b)(2) of this section, the replacement items must be purchased, to the extent necessary, in accordance with the licensee's quality assurance program description required by 10 CFR 50.34(b)(6)(ii).

(xviii) Certification of NDE personnel.

(A) Level I and II nondestructive examination personnel, and personnel qualified under the American Society for Nondestructive Testing Control Certifications Program shall be recertified on a 3-year interval in lieu of the 5-year interval specified in IWA–2314 of the 1997 Addenda and the 1998 Edition, and IWA–2314(a) and IWA–2314(b) of the 1999 Addenda through the latest editions and addenda incorporated by reference in paragraph (b)(2) of this section.

(B) Paragraph IWA–2316 of the 1998 Edition through the latest editions and addenda incorporated by reference in paragraph (b)(2) of this section, may be used to qualify visual examination personnel only for the performance of VT–2 visual examinations when the proficiency of the training required under IWA–2316 is demonstrated by administering an initial qualification examination and administering recertification examinations on a 3-year interval.

(C) Paragraph IWA–2317 of the 1998 Edition through the latest editions and addenda incorporated by reference in paragraph (b)(2) of this section, may be used to qualify visual examination personnel only for the performance of VT–3 visual examinations when the proficiency of the training required under IWA–2317 is demonstrated by administering an initial qualification examination and administering recertification examinations on a 3-year interval.

(xix) Substitution of alternative methods. The provision in IWA–2240, 1998 Edition through the latest editions and addenda incorporated by reference in paragraph (b)(2) of this section, and IWA–4520(c), 1997 Addenda through the latest editions and addenda incorporated by reference in paragraph (b)(2) of this section, that allows the substitution of alternative examination methods, a combination of methods, or newly developed techniques for the methods specified in the Construction Code may not be applied.

(xx) System leakage tests. The pressure and temperature hold time requirements of IWA–5213(a) of the 1995 Edition must be applied in lieu of the provisions of IWA–5213(a) of the 1997 Addenda through the latest editions and addenda incorporated by reference in paragraph (b)(2) of this section, when performing system leakage tests.

(xxi) Table IWB–2500–1 examination requirements.

(A) The provisions of Table IWB–2500–1, Examination Category B–D, Full Penetration Welded Nozzles in Vessels, Items B3.40 and B3.60 (Inspection Program A) and Items B3.120 and B3.140 (Inspection Program B) that are in the 1997 Addenda and 1998 Edition must be applied when using the 1999 Addenda through the latest editions and addenda incorporated by reference in paragraph (b)(2) of this section.

(B) The provisions of Table IWB–2500–1, Examination Category B–G–2, Item B7.80, that are in the 1995 Edition must be applied when using the 1997 Addenda through the latest editions and addenda incorporated by reference in paragraph (b)(2) of this section.

(C) The provisions of Table IWB–2500–1, Examination Category B–K, Item B10.10, of the 1995 Addenda must be applied when using the 1997 Addenda through the latest editions and addenda incorporated by reference in paragraph (b)(2) of this section.

(xxii) Annual Training Requirements for Ultrasonic Examiners. Supplemental annual training for ultrasonic examiner qualification must be in accordance with Appendix VII, paragraph VII–4240, of the 1998 Edition when using the 1999 Addenda through the latest editions and addenda incorporated by reference in paragraph (b)(2) of this section.

(xxiii) Underwater welding. When welding high neutron fluence Class 1 material underwater in accordance with IWA–4660, 1997 Addenda through the latest editions and addenda incorporated by reference in paragraph (b)(2) of this section, the acceptability of the welding method must include demonstration on a mockup using material with similar neutron fluence levels to verify that adequate crack prevention measures were used.

(3) As used in this section, references to the OM Code refer to the ASME Code for Operation and Maintenance of Nuclear Power Plants, and include the 1995 Edition through the 2000 Addenda subject to the following limitations and modifications:

* * * * *

(ii) Motor-Operated Valve stroke-time testing. Licensees shall comply with the provisions on stroke-time testing in OM Code ISTC 4.2, 1995 Edition with the 1996 and 1997 Addenda, or ISTC–3500, 1998 Edition through the latest editions and addenda incorporated by reference in paragraph (b)(3) of this section, and shall establish a program to ensure that motor-operated valves continue to be capable of performing their design basis safety functions.

(iii) Code Case OMN–1. As an alternative to § 50.55a(b)(3)(ii), licensees may use Code Case OMN–1, ''Alternative Rules for Preservice and Inservice Testing of Certain Electric Motor-Operated Valve Assemblies in Light Water Reactor Power Plants,'' Revision 0, in conjunction with ISTC 4.3, 1995 Edition with the 1996 and 1997 Addenda, or ISTC–3600, 1998 Edition through the latest editions and addenda incorporated by reference in paragraph (b)(3) of this section. Licensees choosing to apply the Code Case shall apply all of its provisions.

* * * * *

(iv) Appendix II. Licensees applying Appendix II, ''Check Valve Condition Monitoring Program,'' of the OM Code, 1995 Edition with the 1996 and 1997 Addenda, shall satisfy the requirements of (b)(3)(iv)(A), (b)(3)(iv)(B), and (b)(3)(iv)(C) of this section. Licensees applying Appendix II, 1998 Edition through the latest editions and addenda incorporated by reference in paragraph (b)(3) of this section, shall satisfy the requirements of (b)(3)(iv)(A), (b)(3)(iv)(B), and (b)(3)(iv)(D) of this section.

* * * * *

(D) The provisions of ISTC–3510, ISTC–3520, and ISTC–3540 in addition to ISTC–5221 must be implemented if the Appendix II condition monitoring program is discontinued.

(v) Subsection ISTD. Article IWF–5000, ''Inservice Inspection Requirements for Snubbers,'' of the ASME BPV Code, Section XI, provides inservice inspection requirements for examinations and tests of snubbers at nuclear power plants. Licensees may use Subsection ISTD, ''Inservice Testing of Dynamic Restraints (Snubbers) in Light-Water Reactor Power Plants,'' ASME OM Code, 1995 Edition through the latest editions and addenda incorporated by reference in paragraph (b)(3) of this section, in lieu of the requirements for snubbers in Section XI, IWF–5200(a) and (b) and IWF–5300(a) and (b), by making appropriate changes to their technical specifications or licensee controlled documents. Preservice and inservice examinations must be performed using the VT–3 visual examination method described in IWA–2213.

(vi) Exercise interval for manual valves. Manual valves must be exercised on a 2-year interval in lieu of the 5-year interval specified in paragraph ISTC–3540 of the 1999 Addenda through the latest editions and addenda incorporated by reference in paragraph (b)(3) of this section, provided that adverse conditions do not require more frequent testing.

* * * * *

(g) * * *

(6) * * *

(ii) * * *

(B) * * *

(1) The start of the first 120-month interval for inservice inspection of Class MC and Class CC components must coincide with the start of the first containment inspection.

(2) Licensees do not have to submit to the NRC staff for approval of their containment inservice inspection program which was developed to satisfy the requirements of Subsection IWE and Subsection IWL with specified modifications and limitations. The program elements and the required documentation must be maintained on site for audit.

(C) * * *

(1) Appendix VIII and the supplements to Appendix VIII to Section XI, Division 1, 1995 Edition with the 1996 Addenda of the ASME Boiler and Pressure Vessel Code must be implemented in accordance with the following schedule: Appendix VIII and Supplements 1, 2, 3, and 8—May 22, 2000; Supplements 4 and 6—November 22, 2000; Supplement 11—November 22, 2001; and Supplements 5, 7, and 10—November 22, 2002.

(2) The requirements of Appendix VIII and the supplements to Appendix VIII to Section XI, Division 1, 1995 Edition through the latest editions and addenda of the ASME Boiler and Pressure Vessel Code incorporated by reference in 10 CFR 50.55a(b)(2) apply when implementing paragraph IWA–2232 of the edition and addenda of Section XI referenced in the inservice inspection program Code of Record.

* * * * *

Dated at Rockville, Maryland this 25th day of July 2001.

For the U.S. Nuclear Regulatory Commission.

**William D. Travers,**

*Executive Director for Operations.*

[FR Doc. 01–19414 Filed 8–2–01; 8:45 am]

BILLING CODE 7590–01–P

**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Part 701**

## Organization and Operation of Federal Credit Unions

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Proposed rule.

**SUMMARY:** The NCUA Board proposes amending its rule limiting compensation to officials. The proposal amends the definition of the term ''compensation'' to exclude the reimbursement or payment of business-related travel costs for an official to be accompanied by a guest.

**DATES:** Comments must be received on or before October 2, 2001.

**ADDRESSES:** Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You may fax comments to (703) 518–6319. E-mail comments to regcomments@ncua.gov. *Please send comments by one method only.*

**FOR FURTHER INFORMATION CONTACT:** Dianne M. Salva, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

**SUPPLEMENTARY INFORMATION:**

### Background

NCUA has a policy of continually reviewing its regulations to ''update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.'' Interpretive Rulings and Policy Statement (IRPS) 87–2, Developing and Reviewing Government Regulations. In its review of § 701.33, NCUA found several recent inquiries from federal credit unions (FCUs) and individuals concerning the limitation in § 701.33 on reimbursement of expenses for travel companions of FCU board officials.

The Federal Credit Union Act (the Act) and NCUA regulations provide that only one board officer of an FCU may be compensated as such and that no other official may receive compensation for serving as a board or committee member. 12 U.S.C. 1761(c), 1761a; 12 CFR 701.33. NCUA has defined compensation to exclude reasonable and proper expense reimbursement for costs incurred by FCU officials in carrying out the responsibilities of the positions to which they were appointed or elected. Section 701.33 currently permits reimbursement of a board official and one immediate family member for travel expenses incurred in performing board duties if the payment is necessary and appropriate as determined by the FCU board and is made in accordance with written board policies and procedures. 12 CFR 701.33(b)(2)(i).

Before, § 701.33 permitted an FCU to pay the reasonable and proper travel expenses of officials, but it did not specifically allow payment for the expenses of a companion traveling with the official. 57 FR 18837,18838 (May 1, 1992). In 1989 and 1990, NCUA staff received many inquiries asking whether § 701.33 would permit FCUs to pay the travel expenses of an official's spouse who accompanied him or her on FCU business. In January 1991, NCUA staff issued an opinion that the expenses of an official's spouse did not qualify as a proper business expense of an FCU because there is no direct benefit to the FCU in having the official's spouse accompany the official on business trips or to credit union conferences. This reasoning was based in part on Internal Revenue Service (IRS) interpretations regarding business expense tax deductions taken for spousal travel expenses. Staff concluded that payment of these expenses would be considered compensation to FCU officials that would be prohibited by 12 U.S.C. 1761(c) and 1761a. 57 FR 18837, 18838 (May 1, 1992).

NCUA received many complaints that its interpretation was unduly restrictive. Upon consideration of the strong public sentiment in support of a change to the rule, the NCUA Board, relying on its broad authority to interpret and implement the Act, amended the regulation to permit FCUs to pay the travel costs for an FCU official and an immediate family member. 57 FR 54499 (November 19, 1992). The amended regulation imposed the requirement that the FCU's board of directors adopt written policies and procedures covering such travel reimbursements. The policy must ensure that the only permitted reimbursements are for travel that is necessary and appropriate to carry out FCU official business, and reasonable in relation to the FCU's resources and financial condition. NCUA used ''immediate family member'' rather than ''spouse'' in the amended regulation to provide greater flexibility to FCUs to determine the relationships that qualify for reimbursement. NCUA's Office of General Counsel has interpreted the phrase to permit reimbursement to those persons who have a ''familial'' relationship to the FCU official.

Since the amended regulation has been in effect, NCUA has received several inquiries questioning why the permitted reimbursement is limited to immediate family members of an official. Some FCUs and individuals contend that the rule should permit an FCU to adopt a reimbursement policy for the costs of any travel companion chosen by an FCU official.

The NCUA Board is cautious about expanding the types of payment excluded from the definition of compensation under § 701.33 and notes that, before the last change to the regulation, it received inquiries focusing only on reimbursement for the travel expenses of an official's spouse. At that time, NCUA anticipated that some FCUs might not want to restrict their reimbursement policies to only an official's spouse. NCUA adopted the change to the rule using the term ''immediate family member'' to permit greater flexibility.

Now the NCUA Board believes that there may be cases when an FCU official wishes to be accompanied by a person other than an immediate family member when on business travel. FCU officials who are unmarried and who do not have immediate family members might be constrained from attending certain events to promote credit union business activities, if not permitted to bring a travel companion. The Board recognizes that § 701.33 currently may not permit an FCU to reimburse the expenses of a travel companion, even in circumstances the FCU believes are necessary, appropriate, and incurred by the official in the performance of credit union duties.

To give FCUs additional flexibility regarding the reimbursement of reasonable and proper expenses, NCUA proposes to amend § 701.33(b)(2)(i) to use the term ''guest'' rather than ''immediate family member.'' All other provisions of the regulation would remain the same.

NCUA is requesting comment on this proposed change, which is limited to allowing FCUs to adopt written policies that permit the reimbursement or payment of the travel expense of any guest chosen by an FCU official, as long as the policy meets all other requirements in the regulation. As is true under the current regulation, FCUs are free to adopt a more strict reimbursement policy or deny reimbursement entirely. Further, NCUA cautions FCUs that this proposal has no effect on IRS regulations regarding the reporting and taxing of any payments or reimbursements. FCUs should consult their tax advisors or attorneys concerning IRS requirements related to their travel reimbursement policies.

**Regulatory Procedures**

*Regulatory Flexibility Act*

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small entities (primarily those under one million dollars in assets). The proposed rule will not have a significant economic impact on a substantial number of small credit unions, and therefore, a regulatory flexibility analysis is not required.

*Paperwork Reduction Act*

NCUA has determined that the proposed regulation does not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

*Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This proposed rule, if adopted, will apply only to all federal credit unions. 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. The Board believes that a credit union's board of directors is in the best position to know who among the credit union staff should be responsible for carrying out the important responsibilities of the vital records preservation program. In revising this regulation to eliminate the requirement that designated the financial officer as responsible, the NCUA Board does not want to replace it with another provision removing the ability and responsibility of a credit union's board of directors to make the selection itself. NCUA has determined that the proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

*The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families*

The NCUA has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

*Agency Regulatory Goal*

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive if implemented as proposed.

**List of Subjects in 12 CFR Part 701**

Credit unions, Reporting and recordkeeping requirements, Travel and transportation expenses, Travel restrictions.

By the National Credit Union Administration Board on July 26, 2001.

**Becky Baker,**

*Secretary of the Board.*

For the reasons set forth in the preamble, the National Credit Union Administration proposes to amend 12 CFR part 701 as follows:

## PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

**Authority:** 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789.

Section 701.6 is also authorized by 31 U.S.C. 3717.

Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601–3610.

Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

2. Revise the last sentence of paragraph (b)(2)(i) of § 701.33 to read as follows:

**§ 701.33 Reimbursement, insurance, and indemnification of officials and employees.**

* * * * *

(b) * * *

(2) * * *

(i) * * * Such payments may include the payment of travel costs for officials and one guest per official;

* * * * *

[FR Doc. 01–19105 Filed 8–2–01; 8:45 am]

BILLING CODE 7535–01–U

---

## NATIONAL CREDIT UNION ADMINISTRATION

## 12 CFR Parts 702 and 741

## Prompt Corrective Action; Requirements for Insurance

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Notice of proposed rulemaking and request for comment.

**SUMMARY:** NCUA proposes to amend its rule concerning financial and statistical reports to require all federally-insured credit unions to file quarterly Financial and Statistical Reports with NCUA. Currently, only federally-insured credit unions with assets over $50 million must file these reports quarterly. All other federally-insured credit unions are required to file these reports semi-annually. The proposed amendment is a necessary component of NCUA's proposed examination program that will use a risk-focused approach to examination and extend the examination cycle for credit unions that meet certain criteria. If adopted, NCUA plans to implement the change for the March 31, 2002, call report cycle.

**DATES:** Comments must be received on or before November 1, 2001.

**ADDRESSES:** Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. Fax comments to (703) 518–6319. E-mail comments to *regcomments@ncua.gov.* Please send comments by one method only.

**FOR FURTHER INFORMATION CONTACT:** Peter Majka, Data Analysis Officer, Office of Examination and Insurance, at the above address or telephone number: (703) 518–6360 or Mary F. Rupp, Staff Attorney, Office of General Counsel, at the above address or telephone number: (703) 518–6540.

**SUPPLEMENTARY INFORMATION:**

**Proposed Change**

The NCUA Board proposes revising § 741.6(a), the provision governing the filing of quarterly Financial and Statistical Reports, also known as call reports or 5300 reports. 12 CFR 741.6(a). Currently, this section requires all federally-insured credit unions with assets in excess of $50 million to file a quarterly call report with NCUA. All other federally-insured credit unions file semiannually. The proposed amendment will require all federally-insured credit unions to file quarterly call reports.

This amendment is a necessary component of NCUA's proposed examination program. The proposed examination program has two new features. The first is risk based examination scheduling that will result in an extended examination cycle program for credit unions that meet certain risk criteria. Some credit unions

under $50 million, that are currently not required to file quarterly call reports, may be eligible for participation in the extended examination cycle program. Requiring those credit unions to file quarterly call reports is an essential part of their participation.

The second is a risk-focused approach for all examinations. The proposed risk-focused approach will focus the examination process on those operational areas that represent the greatest risk to the credit union. The process includes evaluating the credit union's financial trend information and management's ability to identify and adapt to changing economic, competitive, technological, and other factors.

These two features will permit NCUA to adjust the examination process for a select number of credit unions based on workload demands in relation to available resources and the risk the credit unions represent to the National Credit Union Share Insurance Fund. Both features will result in better use of available resources and reduce the amount of NCUA on-site contact time needed to assess the overall financial health of federally-insured credit unions. Quarterly financial information will provide NCUA the ability to administer these approaches successfully through off-site review of a credit union's financial trends to detect emerging problems.

In addition, requiring all federally-insured credit unions to file quarterly call reports will provide NCUA and the State Supervisory Authorities (SSAs) with timely and complete financial data to use in supervising their credit unions. It will also enable NCUA, the SSAs, and other federal regulatory agencies, as applicable, to: identify emerging trends and monitor current trends in individual federally-insured credit unions and the credit union industry as a whole; make more efficient use of their time during on-site contacts and examinations, resulting in more time available for analysis and communication with credit union officials; and monitor a federally-insured credit union's net worth position more readily for Prompt Corrective Action purposes and eliminate the need for a credit union to notify NCUA and the SSA of its net worth change when required. 12 CFR 702.101(c).

In conjunction with the change to § 741.6(a), the Board is revising the prompt corrective action rule to eliminate the requirement of written notice to NCUA and the voluntary option of filing a call report for the first and third quarter for credit unions that file call reports semi-annually. 12 CFR part 702.

The quarterly filing requirement will also provide the Central Liquidity Facility with the most recent financial information to process member emergency liquidity requests and allow all federally-insured credit unions to monitor their individual trends more frequently. It also enhances NCUA's ability to monitor its strategic plan goals for credit unions' safety and soundness, membership growth and member services as required by the Public Law 103–62—Government Performance and Results Act of 1993 and OMB Circular A–11–Section 200.

**Regulatory Procedures**

*Paperwork Reduction Act*

The NCUA Board has determined that the proposed rule to require all federally-insured credit unions to file call reports on a quarterly basis is covered under the Paperwork Reduction Act. NCUA is submitting a copy of this proposed rule to the Office of Management and Budget (OMB) for its review.

Currently, only federally-insured credit unions with assets in excess of $50 million must file quarterly call reports with NCUA. All other federally-insured credit unions are required to file a semiannual call report.

The NCUA Board estimates it takes a federally-insured credit union 6 hours on average to complete a call report. By adopting the proposed rule, the NCUA Board also estimates that an additional 8,758 of the current 10,316 federally-insured credit unions would be required to file two additional call reports during the calendar year. This results in an additional 105,096 hours for call report preparation. However, seven SSAs already require their credit unions to file quarterly call reports. Based on this, the NCUA Board estimates that the proposed rule will have an estimated net burden of 100,272 additional hours.

The Paperwork Reduction Act of 1995 and OMB regulations require that the public be provided an opportunity to comment on the paperwork requirements, including an agency's estimate of the burden of the paperwork requirements. The NCUA Board invites comment on: (1) Whether the paperwork requirements are necessary; (2) the accuracy of NCUA's estimate on the burden of the paperwork requirements; (3) ways to enhance the quality, utility, and clarity of the paperwork requirements; and (4) ways to minimize the burden of the paperwork requirements. The time required by a federally-insured credit union to complete the call report will depend on the complexity of its operations. The NCUA Board is especially interested in receiving comments on the actual hours it takes a credit union to complete its call report based on its asset size and complexity of operations. The actual hours should exclude the time associated with the month-end closing and the preparation of the monthly financial statements.

Comments should be sent to: OMB Reports Management Branch, New Executive Office Building, Room 10202, Washington, DC 20503; Attention: Alex T. Hunt, Desk Officer for NCUA. Please send NCUA a copy of any comments you submit to OMB.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA) requires an agency to publish an initial regulatory flexibility analysis with this proposed rule, except to the extent provided in the RFA, whenever the agency is required to publish a general notice of proposed rulemaking for a proposed rule. The Board cannot, at this time, determine whether the proposed rule would have significant economic impact on a substantial number of small entities as defined by the RFA. Therefore, pursuant to subsections 603(b) and (c) of the RFA, the Board provides the following initial regulatory flexibility analysis.

1. Reasons for Proposed Rule

The proposed amendment will provide NCUA and the SSAs with timely and complete financial data to be used in supervising their credit unions as discussed in the **SUPPLEMENTARY INFORMATION** section above. The adoption of the proposed amendment to § 741.6(a) of the NCUA's regulations will account for all of the economic impact on small credit unions.

2. Statement of Objectives and Legal Basis

The **SUPPLEMENTARY INFORMATION** section above contains this information. The legal basis for the proposed rule is in the Federal Credit Union Act. 12 U.S.C. 1756 and 1782.

3. Estimate of Small Credit Unions to Which the Rule Applies

The proposed rule would apply to all federally-insured credit unions. Small credit unions are those with less than $1,000,000 in assets. There are approximately 1,489 small credit unions. Of these 1,489 small credit unions, 55 of the federally-insured state chartered credit unions are already required to file quarterly call reports.

4. Proposed Reporting, Record Keeping, and Other Compliance Requirements

The information collection requirements imposed by the proposed rule are discussed above in the section on the Paperwork Reduction Act.

5. General Requirements

The proposed rule will require all federally-insured credit unions to file quarterly call reports. The call reports are based on financial and other information relevant to a federally-insured credit union's operations. Federally-insured credit unions with assets of $50 million or more are already required to file quarterly reports. All other credit unions are required to file semi-annual call reports. The quarterly call report would be the same report format required on a semi-annual basis. Requiring quarterly call reports is a sound business practice that would provide: (1) A more cost effective supervisory effort when coupled with NCUA's proposed examination approaches; and (2) a quarterly operational monitoring tool for the credit unions.

Some small credit unions may incur additional cost in preparing the two additional call reports, but the cost of doing so is unknown. NCUA seeks any information or comments on the costs associated with preparing the two additional call reports.

6. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

NCUA is unable to identify any federal statutes or rules which duplicate, overlap or conflict with the proposed rule, however, NCUA has identified seven states that require their state chartered federally-insured credit unions to file quarterly call reports. Although the proposed rule is duplicative of those state's requirements, it does not impose any significant, additional burden on those federally-insured credit unions.

7. Discussion of Significant Alternatives

NCUA considered revising the regulation to require only federally-insured credit unions with assets in excess of $10 million to file quarterly call reports. This alternative was not pursued due to proposed changes in NCUA's examination program. Quarterly reporting is a key element to the success of these programs. If the proposal were not adopted, consideration would need to be given to excluding these credit unions from the extended examination cycle approach that defers an examination for one cycle. This results in an examination being conducted every other year. This period of time is too great without the benefit of quarterly trend analysis. NCUA believes the burden of the additional hours it takes a credit union to prepare two additional call reports is outweighed by the advantages outlined in the Proposed Change section.

NCUA also considered the alternative of requiring a credit union with assets of less than $10 million to file a short version of the Form 5300 during the March and September cycles. This alternative would result in additional programming changes and two different call report formats. Credit unions, at present, are only required to prepare those sections of the call report that are pertinent to their operations. A short version of the Form 5300 could result in insufficient trend information when compared to the full semi-annual call report.

NCUA welcomes comment on any significant alternatives, consistent with NCUA's goal of adjusting the examination program and without causing undue risk to the National Credit Union Share Insurance Fund, that would minimize the impact on small credit unions.

*Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntary complies with the executive order. This proposed rule, if adopted, will not have substantial direct effects on the states, on the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined the proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

*Treasury and General Government Appropriations Act, 1999*

NCUA has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

**Agency Regulatory Goal**

NCUA's goal is clear. The proposed regulatory change is understandable and imposes minimal regulatory burden. NCUA requests comments on whether the proposed rule change is understandable and minimally intrusive if implemented as proposed.

**List of Subjects**

*12 CFR Part 702*

Credit unions, Reporting and recordkeeping requirements.

*12 CFR Part 741*

Bank deposit insurance, Credit unions.

By the National Credit Union Administration Board on July 26, 2001.

**Becky Baker,**

*Secretary of the Board.*

Accordingly, NCUA proposes to amend 12 CFR parts 702 and 741 as follows:

## PART 702—PROMPT CORRECTIVE ACTION

1. The authority citation for part 702 continues to read as follows:

**Authority:** 12 U.S.C. 1766(a), 1790(d).

2. Amend § 702.101 by revising paragraph (c) to read as follows:

### § 702.101 Measures and effective date of net worth classification.

* * * * *

(c) *Notice by credit union of change in net worth category.* (1) When filing a Call Report, a federally-insured credit union need not otherwise notify the NCUA Board of a change in its net worth ratio that places the credit union in a lower net worth category; and (2) Failure to timely file a Call Report as required under this section in no way alters the effective date of a change in net worth classification under paragraph (b) of this section, or the affected credit union's corresponding legal obligations under this part.

3. Amend § 702.103 by removing paragraph (b).

## PART 741—REQUIREMENTS FOR INSURANCE

4. The authority citation for part 741 continues to read as follows:

**Authority:** 12 U.S.C. 1757, 1766(a), and 1781–1790; Pub.L. 101–73.

5. Amend § 741.6 by revising paragraph (a) to read as follows:

### § 741.6 Financial and statistical and other reports.

(a) Each operating insured credit union must file with the NCUA a quarterly Financial and Statistical Report on Form NCUA 5300, on or before January 22 (as of the previous December 31), April 22 (as of the previous March 31), July 22 (as of the

previous June 30), and October 22 (as of the previous September 30) of each year.

* * * * *

[FR Doc. 01–19101 Filed 8–2–01; 8:45 am]

BILLING CODE 7535–01–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–NM–362–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model DC–9–81, –82, –83, and –87 Series Airplanes, and Model MD–88 Airplanes

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

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

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–81, –82, –83, and –87 series airplanes, and Model MD–88 airplanes. This proposal would require replacement of the dust seals of the passenger service unit (PSU) panels of the overhead stowage compartment with new dust seals. This action is necessary to ensure replacement of dust seals of the lower PSU panel that may contribute to the spread of a fire when ignition occurs from electrical arcing of a failed light holder assembly, which could cause consequent damage to adjacent structure and smoke emitting from the PSU panel into the passenger cabin. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by September 17, 2001.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–362–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–362–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

**FOR FURTHER INFORMATION CONTACT:** Albert Lam, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5346; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–362–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–362–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The FAA has received a report of an incident of fire, smoke, and strong odors emitting from the passenger service unit (PSU) panel on a McDonnell Douglas Model DC–9–82 series airplane. Investigation revealed damage on the PSU panel, insulation blanket, lower dust seal, fluorescent lamp, and lamp holder of the cabin lower sidewall, and associated wiring. The cause of the fire has been attributed to a failed light holder assembly that generated enough heat to ignite the lower dust seals. Further investigation revealed that the dust seals, which did not meet the current flammability requirements, provided an additional source of fuel for the fire. Dust seals of the lower PSU panel, if not replaced, may contribute to the spread of a fire when ignition occurs from electrical arcing of a failed light holder assembly, which could cause consequent damage to adjacent structure and smoke emitting from the PSU panel into the passenger cabin.

### Other Relevant Rulemaking

The FAA has previously issued AD 2000–23–31, amendment 39–12004 (65 FR 70783, November 28, 2000), which requires deactivating the left and right lower sidewall lights located in the passenger compartment. That AD prevents arcing and heat damage of the Luminator fluorescent lamp holders located outboard of the PSU panel, which could result in smoke and fire in the passenger compartment.

### Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin MD80–25–377, dated March 14, 2001, which describes procedures for replacement of the dust seals of the PSU panels of the overhead stowage compartment with new dust seals. The replacement includes removing adhesive, cleaning the PSU rail, and removing/installing tape. Accomplishment of the actions specified in the service bulletin is

intended to adequately address the identified unsafe condition.

### Explanation of Requirements of Proposed Rule

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

### Cost Impact

There are approximately 529 Model DC–9–81, –82, –83, and –87 series airplanes, and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 261 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 24 work hours per airplane to accomplish the proposed removal, at an average labor rate of $60 per work hour. Required parts would cost approximately $3,000 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,158,840, or $4,400 per airplane.

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

### Regulatory Impact

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

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**McDonnell Douglas:** Docket 2000–NM–362–AD.

*Applicability:* Model DC–9–81, –82, –83, and –87 series airplanes, and Model MD–88 airplanes, as listed in Boeing Service Bulletin MD80–25–377, dated March 14, 2001; certificated in any category.

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

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

To ensure replacement of dust seals of the lower PSU panel that may contribute to the spread of a fire when ignition occurs from electrical arcing of a failed light holder assembly, which could cause consequent damage to adjacent structure and smoke emitting from the PSU panel into the passenger cabin, accomplish the following:

**Replacement of Dust Seals**

(a) Within 24 months after the effective date of this AD, replace dust seals of the PSU panels of the overhead stowage compartment with new dust seals (including removing adhesive, cleaning the PSU rail, and removing/installing tape), per Boeing Service Bulletin MD80–25–377, dated March 14, 2001.

**Spares**

(b) As of the effective date of this AD, no person shall install a dust seal, part number CD1149 (any configuration), on any airplane.

**Alternative Methods of Compliance**

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

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

**Special Flight Permit**

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

Issued in Renton, Washington, on July 27, 2001.

**Vi L. Lipski,**

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

[FR Doc. 01–19386 Filed 8–2–01; 8:45 am]

BILLING CODE 4910–13–P

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–NM–21–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Fokker Model F.28 Mark 0100 Series Airplanes

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

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

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Fokker Model F.28 Mark 0100 series airplanes, that currently requires replacement of the anti-skid control boxes with improved units. This action would require modification or replacement of the anti-skid control boxes with new improved units, which render the skid control boxes even less susceptible to electromagnetic interference during power-up and power-down transients. This action is prompted by continuing mandatory airworthiness information

from a foreign airworthiness authority. The actions specified by the proposed AD are necessary to prevent electromagnetic interference with the anti-skid control system, which could result in reduced brake pressure during low-speed taxiing, and consequent reduced controllability and performance of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by September 4, 2001.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–21–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–21–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Tom Rodriquez, Aerospace Engineer, ANM–116, FAA, Transport Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–21–AD.'' The postcard will be date stamped and returned to the commenter.

## Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket Number 2001–NM–21–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

## Discussion

On October 17, 2000, the FAA issued AD 2000–21–12, amendment 39–11944 (65 FR 63795, October 25, 2000), applicable to all Fokker Model F.28 Mark 0100 series airplanes, to require replacement of the anti-skid control boxes with improved units. The requirements of that AD are intended to prevent electromagnetic interference (EMI) with the anti-skid control system, which could result in reduced brake pressure during low-speed taxiing, and consequent reduced controllability and performance of the airplane.

## Actions Since Issuance of Previous Rule

Since the issuance of that AD, Aircraft Braking Systems (ABS), the manufacturer of the skid control box, has developed another modification, which makes the skid control box even less susceptible to EMI signals during power-up and power-down transients.

## Explanation of Relevant Service Information

Fokker has issued Service Bulletin SBF100–32–123, dated November 15, 2000, which describes procedures for replacing the anti-skid control boxes with new, improved skid control boxes. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The Rijksluchtvaartdienst (RLD), the airworthiness authority for the Netherlands, classified this service bulletin as mandatory and issued Dutch airworthiness directive 2000–149, dated November 30, 2000, in order to assure the continued airworthiness of these airplanes in the Netherlands. The Fokker service bulletin refers to ABS Service Bulletin Fo100–32–83, dated October 30, 2000, as an additional source of service information.

## FAA's Conclusions

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Netherlands has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

## Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 2000–21–12 to require replacement of the anti-skid control boxes with improved units. The actions would be required to be accomplished in accordance with the Fokker service bulletin described previously.

## Cost Impact

There are approximately 129 airplanes of U.S. registry that would be affected by this proposed AD. The modification of an existing anti-skid control box that is proposed in this AD would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $5,628 per airplane. Based on these figures, the cost impact

of the proposed modification on U.S. operators is estimated to be $733,752 or $5,688 per airplane.

No information is available on the cost of replacement of an existing anti-skid control box with a new, improved anti-skid control box, which is provided in this proposal as an option to modification of the existing anti-skid control box.

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

## Regulatory Impact

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

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

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11944 (65 FR 63795, October 25, 2000), and by adding a new airworthiness directive (AD), to read as follows:

**Fokker: Docket 2001–NM–21–AD.** Supersedes AD 2000–21–12, Amendment 39–11944.

*Applicability:* All Model F.28 Mark 0100 series airplanes, certificated in any category.

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

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

To prevent electromagnetic interference with the anti-skid control system, which could result in reduced brake pressure during low-speed taxiing, and consequent reduced controllability and performance of the airplane, accomplish the following:

### Modification or Replacement

(a) Within 24 months after the effective date of this AD: Accomplish the action specified in either paragraph (a)(1) or (a)(2) of this AD.

(1) Modify any anti-skid control box having part number (P/N) 6004272–3, –4, –5, or –6, in accordance with Fokker Service Bulletin SBF100–32–123, dated November 15, 2000; or

(2) Replace any anti-skid control box having part number (P/N) 6004272–3, –4, –5, or –6 with an improved unit having P/N 6004272–7, in accordance with Fokker Service Bulletin SBF100–32–123, dated November 15, 2000.

**Note 2:** Fokker Service Bulletin SBF100–32–123 refers to Aircraft Braking Systems Service Bulletin Fo100–32–83, dated October 30, 2000, as an additional source of service information.

### Spares

(b) As of the effective date of this AD, no person shall install on any airplane an anti-skid control box having P/N 6004272–3, –4, –5, or –6, unless the anti-skid control box has been modified, in accordance with Fokker Service Bulletin SBF100–32–123, dated November 15, 2000.

### Alternative Methods of Compliance

(c)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 2000–21–12, amendment 39–63795, are approved as alternative methods of compliance with this AD.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

### Special Flight Permits

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

**Note 4:** The subject of this AD is addressed in Dutch airworthiness directive 1999–149, dated November 30, 2000.

Issued in Renton, Washington, on July 30,2001.

**Vi L. Lipski,**

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

[FR Doc. 01–19424 Filed 8–2–01; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF THE TREASURY**

**Customs Service**

**19 CFR Parts 122 and 123**

**RIN 1515–AC73**

# Private Aircraft Programs: Establishment of the General Aviation Telephonic Entry (GATE) Program and Revisions to the Overflight Program

**AGENCY:** Customs Service, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to amend the Customs Regulations to provide for the GATE Program—a voluntary program designed to facilitate Customs processing of certain pre-qualified frequent travelers on pre-registered general aviation aircraft arriving in the United States directly from Canada. This document also discusses Customs evaluation of the GATE Program tests which were conducted to determine whether to propose GATE as a regular Customs program. The proposed amendments provide that GATE participants that are in compliance with the program's requirements are exempted to some degree from the general Customs requirements concerning entry into the United States.

This document also proposes to amend the Customs Regulations regarding the Overflight Program that exempts certain private aircraft arriving in the continental United States via certain areas south of the United States from the special landing requirements applicable to such aircraft. The proposed amendments will modify the application process to standardize and streamline the information required and to provide for centralized processing of requests for overflight privileges. This will reduce the processing time of applications, without compromising Customs drug enforcement responsibilities.

These proposed regulatory changes are designed to allow inspection resources to be relocated where they are most effective.

**DATES:** Comments must be received on or before October 2, 2001.

**ADDRESSES:** Written comments may be addressed to, and inspected at, U.S. Customs Service, Office of Regulations and Rulings—Regulations Branch, 1300 Pennsylvania Avenue, NW—3rd Floor, Washington, D.C. 20229.

**FOR FURTHER INFORMATION CONTACT:** Steve Gilbert, Office of Field Operations, Passenger Programs Division, (202) 927–1391.

**SUPPLEMENTARY INFORMATION:**

## Background

*General Customs Requirements Concerning Entry Into the United States (Report of Arrival and Landing, Inspection, and Clearance Requirements)*

In general, except as otherwise authorized by the Secretary, all individuals entering the United States are required to (1) enter only at designated border crossing points, (2) immediately report their arrival to Customs (and other Federal inspection agencies, such as the Immigration and Naturalization Service (INS), that have reporting requirements), and (3) present themselves and their vehicle, and all persons and merchandise (including baggage) on board, for inspection at the designated Customs facility, and may not depart from the designated facility until authorized to do so by the appropriate Customs officer. *See* 19 U.S.C. 1433 and 1459. Failure to report such arrival and make such presentation for inspection may result in the individual being liable for certain civil and criminal penalties. *See* 19 U.S.C. 1459, 1436, and 1497. These general Customs requirements concerning entry, which include the reporting of arrival, landing, inspection, and clearance requirements, applicable to individuals and aircraft entering the U.S. are provided for in Parts 122 and 123 of the Customs Regulations (19 CFR Parts 122 and 123). In general, aircraft arriving in the U.S. from a foreign area must give advance notice of arrival, as required by § 122.31 of the Customs Regulations (19 CFR 122.31).

Certain private aircraft that arrive in the continental U.S. via certain areas south of the U.S. are subject to special report of arrival and landing requirements. Such aircraft must give advance notice of their intended arrival at least one hour before crossing the U.S. coastline or border, *see*, § 122.23(b) of the Customs Regulations (19 CFR 122.23(b)), and land at airports nearest to the coastline or border crossing point designated for Customs processing, *see* § 122.24 of the Customs Regulations (19 CFR 122.24), unless exempted from these requirements in accordance with the provisions of § 122.25 of the Customs Regulations (19 CFR 122.25).

This document concerns two private aircraft programs: the General Aviation Telephonic Entry (GATE) Program, which concerns general aviation aircraft arriving the United States directly from Canada, and the Overflight Program, which concerns certain private aircraft arriving in the continental United States from areas south of the United States. This document proposes to amend the Customs Regulations by modifying the existing Overflight Program and by establishing a new permanent GATE Program.

## I. The GATE Program

*Facilitated Arrival and Clearance of General Aviation Aircraft Through the General Aviation Telephonic Entry (GATE) Program*

Customs and other U.S. border-enforcement agencies frequently design and test programs that aim to facilitate the processing of certain, non-importing, frequent travelers arriving in the United States; such travelers pose low risks to these agencies' law-enforcement responsibilities. (*See* T.D. 97–48 (62 FR 32030, June 12, 1997), which makes provision for certain technologically-innovative, land-border inspection programs, collectively known as the Port Passenger Accelerated Service System (PORTPASS).) Participation in these kinds of programs is voluntary and requires participants to agree to the program's requirements, which include the pre-filing of certain personal information and requires the participant to arrive in the U.S. only at designated locations. In exchange for this cooperation, participants are exempted to some degree from the general Customs requirements concerning entry into the United States set forth at 19 CFR 123.1.

Historical data on certain general aviation aircraft (private aircraft and certain commercial aircraft, consisting of small charter/air taxi aircraft and air ambulances that have a seating capacity for fifteen or fewer individuals, when such aircraft are not in commercial service) arriving in the United States directly from Canada indicates a high degree of compliance with Customs and other federal agency reporting laws. Based on this history and pursuant to the U.S.-Canada Shared Border Accord, Customs developed the General Aviation Telephonic Entry (GATE) Program. The GATE Program was designed to facilitate Customs processing of certain frequent travelers (low-risk and pre-qualified) on selected flights (pre-registered) of general aviation aircraft by allowing the aircraft to report its arrival information telephonically and by Customs generally pre-clearing the flight: upon landing the frequent travelers may depart the aircraft with their personal effects at the time of arrival reported. Random inspections also were built into the program. Thus, the GATE Program

was designed to combine the proven benefits of facilitating the arrival and clearance of those low-risk frequent travelers that choose to participate in this voluntary program with inspection selectivity, so that Customs inspectional resources could be utilized where they are most effective.

*GATE Program Tests Conducted*

For programs designed to evaluate the effectiveness of new technology or operations procedures regarding the processing of passengers, vessels, or merchandise, § 101.9(a) of the Customs Regulations (19 CFR 101.9(a)), implements the general testing procedures. The general testing of the GATE Program—to evaluate the effectiveness of the new operations procedure—was established pursuant to that regulation.

On November 4, 1996, Customs implemented the GATE Program test for one year (*see* 61 FR 46902, dated September 5, 1996). The initial test allowed certain pre-registered, passenger-carrying flights of certain general aviation aircraft to report their arrival telephonically when entering the United States directly from Canada. If all the information regarding the GATE flight met the program's requirements, then Customs assigned an advance arrival number which gave permission for that flight to land at a GATE-designated airport. The test was implemented at designated airports of entry located nationwide.

Although the initial test was to be open to all qualified flights along the northern border, many eligible flights could not participate in the GATE Program test due to personnel constraints and other matters. Accordingly, because an evaluation of the initial test yielded only partial results and an analysis of comments received showed a willingness by the traveling community to participate in GATE if only the program were more readily available, on July 6, 1998 (*see* 63 FR 36483), Customs announced its plan to conduct a second test of GATE for one year, beginning August 5, 1998. The second test expanded the scope of participation to include ports with one full-time inspector and additional flights of certain commercial aircraft (small charter/air taxi aircraft returning with flight crew members only).

A. Evaluation of GATE Tests

Customs evaluated the GATE Program tests by developing certain performance criteria and measuring over time the test population's overall compliance rating with these performance criteria against baseline measurements.

Overall, 235 airports were designated for GATE Program use and 2,982 aircraft participated in the two GATE Program tests. The data was collected over the period from September 1996 to September 1999.

B. Evaluation Process

To evaluate the achievement of the program tests, Customs established two performance criteria to measure such operational issues as whether participants met the requirements concerning advance notification and complete declarations. Baseline compliance measurements for each aircraft were recorded and subsequent compliance measurements were taken monthly and averaged quarterly. To evaluate the various performance statistics, the raw data was compiled and the following factor ratings were used in measuring participant's compliance:

If the criterion was met 100% of the time, an ''Excellent'' rating was ascribed;

If the criterion was met 90–99% of the time, a ''Good'' rating was ascribed; and

If the criterion was met less than 90% of the time, a ''Poor'' rating was ascribed.

C. Performance Criteria and Results of Evaluation

Customs evaluation of the GATE Program tests is based on the proficiency results of the 2,982 aircraft that participated in meeting the following performance criteria:

Criterion A measured the number of seizures resulting from attempted importation of prohibited or undeclared articles. Two surveys were conducted to determine the compliance rate for this criterion: the first, conducted between October 1, 1997–October 31, 1998, showed an overall compliance rating of 100%, and the second, conducted between April 1, 1999–June 30, 1999, similarly showed an overall compliance rating of 100%, which constitutes an ''Excellent'' rating for this criterion.

Criterion B measured the number of other violations, such as failure to timely report arrival. Again, two surveys were conducted to determine the compliance rate for this criterion: the first, conducted between October 1, 1997–October 31, 1998, showed an overall compliance rating of 100%, and the second, conducted between April 1, 1999–June 30, 1999, similarly showed an overall compliance rating of 100%, which constitutes an ''Excellent'' rating for this criterion.

In addition to these favorable compliance ratings, Customs received many comments from participants stating that the GATE Program was an effective procedure for expediting the processing of certain flights carrying low-risk frequent travelers arriving in the United States.

Overall, an ''Excellent'' compliance rating was scored by the participants, which convinces Customs that the program tests were successful and that GATE achieved its quicker processing and law-enforcement objectives.

*Proposed Amendments to the Regulations to Implement the GATE Program*

Owing to the favorable comments and evaluations received concerning the testing of the GATE Program, Customs is proposing regulations to implement the GATE Program on a permanent basis. To make provision for the GATE Program, it is proposed in this document to amend the Customs Regulations at Part 122, which contains Air Commerce Regulations applicable to private aircraft, and at Part 123, which pertains to Customs relations with Canada and Mexico and contains the general report of arrival requirements applicable to individuals. In Part 122, a new § 122.39 will be added that explains the specifics of the GATE Program. Conforming reference changes also will be made to §§ 122.22, 122.24, 122.26, 122.31, and 122.36. In Part 123, § 123.1 will be revised to reference the GATE Program.

Customs notes that the test notices referenced both ''private'' and ''corporate'' aircraft as ostensibly separate types of aircraft. In these proposed regulations, because ''corporate aircraft'' are encompassed within the definition of ''private aircraft'' in 19 CFR 122.1(h) and private aircraft are included within the description of aircraft eligible for the GATE Program, there is no need to provide separately for corporate aircraft. Customs also notes that although the test notices stated that the GATE Program was concerned with allowing qualified flights to telephonically report their ''entry'' into the U.S., technically, these flights were reporting their ''arrival'', which is the nature of the reporting exemption proposed at § 123.1(a)(2). Also, because ''private aircraft'' are exempt from formal entry requirements, *see* 19 CFR 122.26, the proposed regulatory text references ''arrival and clearance'' requirements and not ''entry'' requirements.

**Discussion of Proposed New Section 122.39**

*Section 122.39(a)—''Description of Program''*

Under the heading ''Description of program'', paragraph (a) will describe

the GATE Program in general terms. It will provide that this program is designed to facilitate the processing of certain pre-qualified frequent travelers on pre-registered general aviation aircraft arriving in the United States directly from Canada; that participation in the GATE Program is voluntary and requires participants to comply with the program's requirements, which include the pre-filing of certain personal information and arriving in the U.S. only at designated locations; and that in exchange for this cooperation, participants are exempted from the general Customs requirements for entry into the United States, so long as the participants are in compliance with the program's requirements. This paragraph also will caution that participants should be aware that failure to follow program requirements on GATE-approved flights can result in revocation of their participation in the program and may result in their being liable for certain civil and criminal penalties. It further provides that, although applications may be approved for a period of years, particular flights may be denied GATE privileges because of the further conditions pertaining to landing rights airports, found at § 122.14(d).

Paragraph (a) also will explain the modified arrival procedure of the GATE Program: that the pilot of the GATE-approved flight provides Customs with the required advance notice of the flight's arrival; that Customs then gives the GATE flight an advance arrival number which gives permission for the flight to land at an airport which has been designated for program use; and that upon landing in the U.S., the participants on board may depart the aircraft with their personal effects. However, if the flight is ahead of schedule, then all individuals must remain onboard the aircraft until the time of arrival that was reported. *See* 19 U.S.C. 1433(e) and 1454. Because the individuals on GATE-approved flights are to be pre-cleared telephonically, all individuals onboard must be participants in the GATE Program and in compliance with the program's requirements. This facilitated processing procedure is in lieu of the general Customs requirements concerning entry into the U.S., contained at § 123.1 of the Customs Regulations.

*Section 122.39(b)—''Eligibility and Application Procedures''*

Under the heading ''Eligibility and application procedures'', paragraph (b) will explain both the eligibility criteria of individual frequent travelers, general aviation aircraft, and designated airports, and the application procedure that only the aircraft owners/operators must follow. Although three entities (aircraft, airports, and individual frequent travelers) are separately identified as being eligible to participate in the GATE Program, the association between eligible general aviation aircraft and individual frequent travelers is very direct: the individuals to be carried on the aircraft must be either members of the flight crew, corporate employees/officers, or the pilot of the aircraft.

Regarding aircraft eligibility, only U.S.-and Canadian-registered general aviation aircraft that arrive in the United States directly from Canada are eligible to participate in the GATE Program. Aircraft transiting Canada and aircraft that will carry cargo, merchandise requiring the payment of Customs duties or merchandise that is restricted or prohibited, or monetary instruments in excess of $10,000 are not eligible to participate in the GATE Program. For GATE Program purposes, the term ''general aviation aircraft'' means private aircraft, and certain commercial aircraft, consisting of small charter/air taxi aircraft and air ambulances that have a seating capacity for fifteen or fewer individuals, when such aircraft are not in commercial service. Aircraft accepted into the GATE Program maintain their eligibility status so long as they make at least one flight per year.

Regarding airports, eligible flights must land at airports that are designated for GATE use. While airports already designated for GATE use are generally within a port of entry, other airports located outside of a port of entry also may be approved for GATE use. If an airport which is not already designated for GATE use is requested on a GATE application, the requested airport will be reviewed by the local port director, who will take the following factors into consideration in determining whether to approve the airport for GATE use:

a. Willingness of the airport operator to participate in the GATE Program;

b. The distance to the airport from the nearest Customs port of entry (so that random inspections can be performed), commuting time required for Customs officers, and Customs officer safety en route to the airport;

c. Whether a secure place to work is provided at the airport; and

d. Whether communications equipment is accessible.

Regarding the eligibility of individual frequent travelers, only U.S. citizens, permanent resident aliens of the United States, Canadian citizens, or landed immigrants in Canada from Commonwealth countries who are either members of the flight crew, corporate employees/officers, or the pilot of the general aviation aircraft are eligible to participate in the GATE Program. Each individual must demonstrate his right to be legally admitted into the United States by passing a ''face-to-face'' inspection with either a U.S. Immigration or Customs officer. Further, on GATE-approved flights each individual must agree to carry all required personal identification and immigration documents and not to carry merchandise that requires the payment of Customs duties or merchandise that is restricted or prohibited, or monetary instruments in excess of $10,000.

Applications for GATE are to be submitted only by eligible general aviation aircraft owners/operators who want all or certain of their flights considered for participation in the GATE Program. An application is filed on new Customs Form (CF) 442 (Application for Exemption from Special Landing Requirements (Overflight) or General Aviation Telephonic Entry Program (GATE)). Copies of the new CF 442 are available at any Customs port. The following specific information is required to be submitted on the CF 442: the name of the aircraft owner/operator applicant; identification of the aircraft to be flown; identification of the airport(s) of intended landing in the U.S.; and the names and other personal identification information of individual frequent travelers, which include the pilot of the aircraft, the members of the flight crew, and corporate employees/officers intended to be carried onboard GATE-approved flights. The CF 442 also contains a statement which the applicant is required to sign that certifies the truthfulness of the information provided, authorizes Customs to perform whatever checks and inspections as are necessary to verify the information provided, and states that the applicant acknowledges having read the program's requirements, agrees to abide by them, and understands that failure to follow such requirements on GATE-approved flights can render participants liable for certain civil and criminal penalties. By signing and submitting a CF 442, an aircraft owner/operator acknowledges that individual frequent travelers identified have been informed of the program's requirements and the penalties for failure to comply with these requirements, and agrees that a participating aircraft will not carry individuals who are not approved and that frequent travelers onboard will not be allowed to carry merchandise that

requires the payment of Customs duties or merchandise that is restricted or prohibited, or monetary instruments in excess of $10,000 on GATE-approved flights.

Individual frequent travelers who wish to participate in the program on aircraft of eligible general aviation aircraft owners/operators do not file a CF 442; they provide their personal identification information to the aircraft owner/operator who includes the information on his CF 442. Individual frequent travelers who provide their personal information for inclusion on an aircraft owner's/operator's CF 442 must sign a Privacy Act waiver provided to them by the aircraft owner/operator that authorizes Customs to perform whatever checks are necessary to determine their eligibility for participation in the program and to advise the aircraft owner/operator as to whether the individual is approved. Customs will verify information through the Treasury Enforcement Communications System (TECS). The waiver is to be submitted to the aircraft owner/operator who will forward all the individual Privacy Act waivers with his CF 442 to Customs. Individuals approved by Customs to participate in the GATE Program must abide by the program's requirements and not carry merchandise that requires the payment of Customs duties or merchandise that is restricted or prohibited, or monetary instruments in excess of $10,000 on GATE-approved flights.

Applications for GATE with the individual frequent traveler's signed Privacy Act waiver attached are to be filed with the GATE Program Center—U.S. Customs Service, Detroit Metropolitan Airport, GATE Program Center, International Terminal, Detroit, Michigan 48242. In general, applications must be submitted to the GATE Program Center at least 30 days prior to the date of the first scheduled flight and addenda or modifications reflecting material changes must be submitted at least 30 days prior to the date of the flight for which the changes are in effect. (Although the time frame for submitting applications was 45 days prior to the date of the scheduled flight during the test phases of this program, Customs considers a 30-day time frame sufficient to process applications.)

*Section 122.39(c)—''Notice of Action on Application; Appeal Rights''*

Under the heading ''Notice of action on application; appeal rights'', paragraph (c) will explain Customs notification procedure following its evaluation of an application to participate in the GATE Program. This paragraph will provide that the GATE Program Center determines whether the information provided on the CF 442 meets the various eligibility criteria, and notifies the aircraft owner/operator-applicant within 30 days as to whether the application is approved or denied. Paragraph (c) will also delineate the specific grounds for not approving an application. Finally, the paragraph will reference the various administrative appeal procedures that general aviation aircraft owner/operator-applicants must follow to challenge Customs initial notice of denial (and any subsequent adverse determinations that may be issued). Individual frequent travelers designated by applicants will have no direct appeal rights.

In cases where certain of multiple frequent travelers listed on the CF 442 are not approved, those not approved will be lined out by the GATE Program Center and the overall application will be approved. In cases where either the aircraft, the owner/operator of the aircraft, or the pilot is not approved, then the GATE Program Center will deny the application. The applicant may then either submit a new application after waiting a period of 30 days from the date of issuance of the initial notice of denial or exercise its appeal rights. (The appeal procedure actually will be provided at paragraph (d), but is discussed here for convenience.)

The appeal procedure will allow for two levels of administrative review. The first level of appeal will be to the Detroit Port Director and the appeal must be filed within 10 calendar days of the date of issuance of the initial notice of denial. Within 30 days of receipt of the appeal, the Detroit Port Director, or his designee, will make a determination regarding the appeal and notify the appellant of the decision in writing. If the appeal to the Detroit Port Director results in an adverse determination, then a second level of appeal may be taken to the Assistant Commissioner, Office of Field Operations, U.S. Customs Service, 1300 Pennsylvania Avenue, Washington, D.C. 20229, provided the appeal is filed within 10 calendar days of the date of issuance of the Detroit Port Director's adverse determination. Within 30 days of receipt of the appeal, the Assistant Commissioner, or his designee, will make a determination regarding the appeal and notify the appellant of the decision in writing. If the appeal to the Assistant Commissioner again results in an adverse determination, no further administrative recourse is available.

If an application designates multiple airports for landing and some of the airports cannot be approved for GATE use, the application will be approved for GATE participation and the unapproved airports will be lined out. If an application designates only one airport for landing and that airport cannot be approved for GATE use, the application will be approved and the nearest GATE-approved airport will be designated for the applicant. Regarding airport designations, no appeal is available.

*Section 122.39(d)—''Notice of Revocation; Appeal Procedures''*

Under the heading ''Notice of revocation; appeal procedures'', paragraph (d) will delineate the specific reasons participation in the GATE Program may be immediately revoked and explain the two levels of administrative appeal procedure, discussed above, common to both nonselected applicants and revoked participants who want to challenge Customs initial notices of action in the matter. An aircraft's participation in the GATE Program may be immediately revoked by the GATE Program Center for any of the following reasons:

(1) The application contained false or misleading information concerning a material fact;

(2) An approved individual:

(a) Is subsequently indicted for, convicted of, or has committed acts which would constitute any felony or misdemeanor under United States Federal or State law. In the absence of an indictment, conviction, or other legal process, Customs must have probable cause to believe proscribed acts occurred. This provision will also apply to the owner/ operator of the aircraft;

(b) Allows an unauthorized individual to use his GATE certificate or other approved form of identification;

(c) Refuses or otherwise fails to follow any proper order of a Customs officer or any Customs order, rule, or regulation; or

(d) Fails to adhere to the conditions or restrictions imposed by the GATE Program;

(3) Reasonable grounds exist to believe that Federal rules and regulations pertaining to public health or safety, Customs, or other inspectional activities have not been followed; or

(4) Continuation of GATE privileges would endanger the revenue or otherwise invite circumvention of laws enforced by Customs.

When a decision revoking participation has been made, the Gate Program Center will notify the aircraft owner/operator-participant of the decision in writing. The notice of revocation will state the reason(s) for revocation and advise the participant of its administrative appeal rights and

alternate recourse of submitting a new application after waiting a period of 30 days from the date of issuance of the initial notice of revocation or any subsequent adverse determination.

## II. The Overflight Program

Although special report of arrival and landing requirements are applicable to private aircraft that arrive in the continental U.S. from areas south of the U.S. (19 CFR 122.23–122.24), private aircraft owners or operators may seek an exemption from the special landing requirements (overflight privileges), for either a single flight or for a number of flights over a period of one year, by filing a written request with the port director having jurisdiction over the airport designated for landing, as provided by § 122.25. The processing of requests for exemption(s) and the revocation of overflight privileges are administered by the Overflight Program.

Various amendments are proposed to the regulations concerning the Overflight Program. The present overflight regulatory procedure does not provide for the uniform processing of exemption requests. Requests for exemption(s) frequently contain nonstandardized information and are processed differently across the country. Customs is proposing to amend the overflight provisions at § 122.25 to provide for a more uniform approach to collecting information. Certain information regarding business activity is no longer considered necessary and the requirement to provide justification for the exemption sought are proposed to be removed. It is also proposed to provide for a centralized location—Newark International Airport in New Jersey—to process applications for exemptions. In addition, advance notification requirements are proposed to be changed. Section 122.25(a) currently provides that aircraft traveling under an exemption must continue to follow the advance notice requirements of § 122.23(b), which provide that the aircraft furnish the notice of intended arrival to Customs at the nearest designated airport to the point of crossing listed at § 122.24(b). Customs is proposing that the advance notice of arrival from exempted aircraft be made to the airport to which the aircraft is destined rather than to the nearest landing airport, designated by § 122.24(b), from which the aircraft has been exempted. Amendments are also proposed concerning the duration of term exemptions. Also, Customs proposes an appeal procedure similar to that already discussed under the proposed GATE regulations, so that private aircraft owners/operators either requesting an exemption from the special landing requirements and being denied or having an approved exemption revoked can have administrative review of such decisions.

Conforming reference changes also will be made to §§ 122.22 and 122.24.

### Discussion of Proposed Amendments to § 122.25

*Section 122.25(a)—''Description of Overflight Program''*

In § 122.25, the heading of paragraph (a), currently entitled ''Request'', will be amended to read ''Description of Overflight Program'' to explain the program in general terms. Revisions to the regulatory text will more clearly show that exemptions can be requested by eligible private aircraft owner/operators (applicants) either for a single flight or for a number of flights over a period of two years (increased from one year). Further, these regulations will clarify that failure to follow program requirements can result in revocation of overflight privilege(s) and liability for certain civil and criminal penalties.

Paragraph (a) will more clearly describe the scope of the overflight privilege. It will provide that an exemption (overflight privileges) from the special landing requirements is available and specify the advance report of arrival procedures regarding when, where, and how Customs must be notified. Further, this paragraph will set forth the conditions and continuing responsibilities of aircraft owners/operators whose private aircraft have been granted an overflight privilege; this information is currently provided for at paragraphs (b) and (d).

Paragraph (a) will also inform participants that, although their applications may be approved for a period of years, particular flights may be denied because of the further conditions pertaining to landing rights airports, found at § 122.14(d). Lastly, the current provisions of paragraph (e) pertaining to inspection of the aircraft will be relocated to paragraph (a), since the inspection of the aircraft normally occurs before the overflight privilege is granted.

*Section 122.25(b)—''Eligibility and Application Procedures''*

The heading of paragraph (b), currently entitled ''Procedure'', will be amended to read ''Eligibility and application procedures''. This paragraph will explain both the eligibility criteria for private aircraft and individuals to be routinely carried onboard the Overflight-approved flights, and the application procedure that only the aircraft owners/operators must follow who want all or certain of their flights considered for the Overflight Program.

Regarding aircraft eligibility, only private aircraft arriving in the continental United States via certain areas south of the United States are eligible to participate in the Overflight Program. For purposes of the Overflight Program, it is important to note that the definition of ''private aircraft'' is broader than the general aviation aircraft term employed by the GATE Program. ''Private aircraft'' in the context of this program includes aircraft with a seating capacity of 30 passengers. *See* § 122.23(a).

Regarding the identification of individuals to be carried on Overflight-approved flights, personal identification information of the pilot, members of the flight crew, and any individuals who will be the usual or anticipated passengers intended to be routinely onboard an eligible private aircraft must be provided on the application for an overflight privilege. On Overflight-approved flights each individual must agree not to carry restricted or prohibited merchandise on their person or in their baggage.

As discussed above for the GATE Program, the applications for exemptions from the special landing requirements (overflight privileges) are to be filed on the new Customs Form (CF) 442, which are available at any Customs port. The new CF 442 will streamline the amount of information required of applicants. Customs will no longer require information concerning business activities and justification for the exemptions. This should speed the processing of both the original request and any subsequent renewals for exemptions already on file.

Further as stated in the discussion on GATE, the following specific information is required to be submitted on the CF 442: the name of the aircraft owner/operator applicant; identification of the aircraft to be flown; identification of the airport(s) of intended landing in the U.S.; and the names of individuals, which include the pilot, and applicable flight crew and all usual or anticipated passengers, intended to be routinely carried onboard Overflight-approved flights. (Unlike the GATE Program where the approved flight is pre-cleared, the Overflight Program does not require information on every passenger that will be onboard because the approved flight will be met by Customs at the airport approved for the overflight.) Also, as discussed above for the GATE Program, the CF 442 contains a certification statement that must be signed and states that the applicant acknowledges having

read the program's requirements and agrees to abide by them and understands that failure to follow such requirements on Overflight-approved flights can render participants liable for certain civil and criminal penalties. By signing and submitting a CF 442, an aircraft owner/operator acknowledges that individual passengers identified have been informed of the program's requirements and the penalties for failure to comply with these requirements, and agrees not to knowingly carry individuals who do not comply with the Overflight Program requirements, or who carry restricted or prohibited merchandise on their person or in their baggage on Overflight-approved flights.

Also as discussed above for the GATE Program, individuals that are routinely carried on eligible private aircraft who wish to participate in the program do not file a CF 442; they provide their personal identification information to the aircraft owner/operator who includes the information on his CF 442. The proposed provisions regarding the collection of personal information from individual passengers and the signing of the Privacy Act waiver that must be submitted to Customs parallel the procedures discussed above for GATE applications.

Applications for an overflight privilege with the individual passenger's Privacy Act waivers attached are to be filed with the Overflight Program Center—U.S. Customs Service, Sealand Building, Overflight Program Center, 1210 Corbin Street, Elizabeth, New Jersey 07201. In general, applications are to be submitted to the Overflight Program Center at least 30 days prior to the date of the first scheduled flight and addenda or modifications reflecting material changes must be submitted at least 30 days prior to the date of the flight for which the changes are in effect.

*Section 122.25(c)—''Notice of Action on Application; Appeal Rights''*

Since the current provisions of paragraph (c) will be covered in new paragraph (b), the heading of paragraph (c), currently entitled ''Content of request'', will be amended to read ''Notice of action on application; appeal rights''. This paragraph will provide that, after consulting with the port director having jurisdiction over the airport designated for landing, the Overflight Program Center determines whether the information provided on the CF 442 meets the program's criteria, and notifies the aircraft owner/operator-applicant within 30 days as to whether the application is approved or denied. Paragraph (c) will also delineate the specific grounds for not approving an application. Finally, the paragraph will reference the various administrative appeal procedures that private aircraft owner/operator-applicants must follow to challenge Customs initial notice of denial (and any subsequent adverse determinations that may be issued). Individual passengers designated by applicants will have no direct appeal rights.

As discussed for the GATE Program, in cases where certain of multiple passengers listed on the CF 442 are not approved, those not approved will be lined out by the Overflight Program Center and the overall application will be approved. In cases where either the aircraft, the owner/operator of the aircraft, or the pilot is not approved, then the Overflight Program Center will deny the application. Applicants denied an exemption request may either submit a new application to the Overflight Program Center after waiting a period of 30 days from the date of issuance of the initial denial notice or appeal the notice of denial through two levels of administrative review. The first level of administrative review of Customs initial denial of an application is to the Director of Field Operations at the Customs Management Center responsible for supporting the particular port of entry. The second level of administrative review is to the Assistant Commissioner, Office of Field Operations. Appeals must be filed within 10 calendar days of the date of issuance of a denial and the appeal decision will be made within 30 days of the date of receipt of the appeal.

*Section 122.25(d)—''Notice of Revocation; Appeal Procedures''*

Since the current provisions of paragraph (d) will be covered in new paragraph (a), the heading of paragraph (d), currently entitled ''Procedure following exemption'', will be amended to read ''Notice of revocation; appeal procedures''. This paragraph will provide that exemption(s) can be immediately revoked by the Overflight Program Center, after consulting with the port director having jurisdiction over the airport designated for landing, for any of the specified reasons, which parallel the reasons given above for the GATE Program. When Customs decides to revoke an exemption, notice of the action will be in writing and advise the applicant of its appeal rights, discussed above under paragraph (c), which also parallel the procedures discussed for the GATE Program.

## III. Privacy/Freedom of Information Acts Notice

Customs files containing the information provided on the CF 442, the individual frequent traveler's/passenger's signed Privacy Act waivers authorizing Customs to advise the aircraft owner/operator whether the individual is approved for program participation, and information concerning Customs determinations of individuals' eligibility to participate in a private aircraft program will be maintained in filing cabinets and are retrievable only by aircraft tail number reference. For the GATE Program, the files will be located at the GATE Program Center in Detroit, Michigan; for the Overflight Program, the files will be located at the Overflight Program Center in Elizabeth, New Jersey. Information may also be retrieved electronically through TECS, again using only the aircraft tail number as a reference.

*Comments*

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

*The Regulatory Flexibility Act and Executive Order 12866*

Pursuant to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities because the proposed amendments either pertain to a voluntary program (the GATE Program), which confers a benefit on private and general aviation aircraft, or streamline the information collection of an existing program (the Overflight Program). Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. These proposed amendments do not meet the criteria for a ''significant

regulatory action'' as specified in Executive Order 12866.

*Paperwork Reduction Act*

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). Comments on the collections of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to Customs at the address set forth previously.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the information collection burden on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide information.

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

The collections of information in these proposed regulations are at § 122.39(b)(2) (for the GATE Program) and § 122.25(b) (for the Overflight Program).

For the GATE Program, the information to be collected is necessary so that Customs can select only those frequent traveler individuals who present no risk to the northern border by their voluntary participation in the GATE Program. The likely respondents are individuals and general aviation aircraft owners/operators that engage in foreign commerce and trade along the northern border of the United States.

*Estimated total annual reporting and/or recordkeeping burden:* 203 hours.

*Estimated average annual burden per respondent/recordkeeper:* 10 minutes.

*Estimated number or respondents and/or recordkeepers:* 3,497.

*Estimated annual frequency of responses:* on occasion.

For the Overflight Program, the information to be collected is necessary so that Customs can grant exemptions from the special landing requirements (overflight privileges) only to those private aircraft that will not be endeavoring to smuggle narcotics from countries south of the U.S. The likely respondents are individuals and private aircraft owners/operators that engage in foreign commerce and trade along the southern border of the United States.

*Estimated total annual reporting and/or recordkeeping burden:* 15 hours.

*Estimated average annual burden per respondent/recordkeeper:* 3 minutes.

*Estimated number or respondents and/or recordkeepers:* 300.

*Estimated annual frequency of responses:* on occasion.

Part 178 of the Customs Regulations (19 CFR part 178), which lists the information collections contained in the regulations and control numbers assigned by OMB, will be amended accordingly if this proposal is adopted.

*Drafting Information*

The principal author of this document was Gregory R. Vilders, Attorney, Regulations Branch, Office of Regulations and Rulings. However, personnel from other offices participated in its development.

**List of Subjects**

*19 CFR Part 122*

Administrative practice and procedure, Air carriers, Aircraft, Airports, Air transportation, Baggage, Customs duties and inspection, Drug traffic control, Entry procedures, Imports, Penalties, Reporting and recordkeeping requirements, Security measures.

*19 CFR Part 123*

Administrative practice and procedure, Aircraft, Aliens, Canada, Customs duties and inspection, Forms, Immigration, Imports, Mexico, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

For the reasons stated above, it is proposed to amend parts 122 and 123 of the Customs Regulations (19 CFR parts 122 and 123) as set forth below:

## PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for part 122 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

2. Section 122.22 is amended by adding at the end before the period the words '', unless authorized to participate in the GATE Program (*see* § 122.39) or exempted from this requirement in accordance with the Overflight Program (*see* § 122.25)''.

3. In § 122.24, paragraph (a) is amended by adding at the end before the period the words '', unless authorized to participate in the GATE Program (*see* § 122.39) or exempted from this requirement in accordance with the Overflight Program (*see* § 122.25)''.

4. Section 122.25 is revised to read as follows:

**§ 122.25 Exemption from special landing requirements.**

(a) *Description of Overflight Program.*—(1) *In general.* Any company or individual that has operational control over a private aircraft as defined under § 122.23(a), that is required to give advance notice of arrival under the provisions of § 122.23(b), and is required to land for Customs processing at the nearest designated airport to the border or coastline crossing under the provisions of § 122.24 may request an exemption from the special landing requirements. Exemptions (overflight privileges), granted based on the pre-filing of certain personal and aircraft information, may be requested by the owners/operators of eligible private aircraft either for a single flight or for all flights over a period of two years. Term exemptions may be renewed for two-year periods of time. Failure to follow program requirements on Overflight-approved flights can result in revocation of overflight privileges and may result in liability for certain civil and criminal penalties. Owners/operators participating in the Overflight Program also should note that, although their applications may be approved for a period of years, particular flights may be denied because of the further conditions pertaining to landing rights airports, found at § 122.14(d).

(2) *Overflight procedures.* Where an exemption has been granted, the aircraft commander must give Customs notice of arrival as follows:

(i) *When to report.* The notice of arrival must be reported at least 60 minutes prior to landing, unless Customs notifies the aircraft commander that more advance notice of arrival is necessary because the airport of destination is located in a remote area, *see* § 122.31(e);

(ii) *Where to report.* The notice of arrival must be reported to Customs at the approved airport of destination; and

(iii) *How to report.* The notice to Customs may be furnished directly to Customs by telephone, radio, or other method, or indirectly through the Federal Aviation Administration to Customs. Where the notice is furnished indirectly, it is still the responsibility of the aircraft commander to ensure that Customs is properly notified of the aircraft's arrival.

(3) *Overflight conditions and responsibilities.*—(i) *Flight rules.* An overflight must be conducted pursuant to an instrument flight rule (IFR) flight plan filed with the Federal Aviation Administration (FAA) or equivalent foreign aviation authority prior to commencement of the overflight. The crossing into the U.S. must be made within an FAA authorized airway.

(ii) *Flight crew and passengers.* On Overflight-approved flights the pilot(s) and all crew members must be approved, and, if passengers are on board, at least one of the passengers must be approved. Further, all individuals must abide by the program's requirements and not carry restricted or prohibited merchandise on their person or in their baggage.

(iii) *Other requirements.* The owner/operator of the private aircraft granted an exemption from the special landing requirements must:

(A) Notify Customs of any of the following events regarding the aircraft or flight crew members of the aircraft either within 5 working days of the event or before a scheduled flight of that aircraft, whichever occurs earlier:

(*1*) A change of Federal Aviation Administration or foreign registration number for the aircraft;

(*2*) The sale, theft, modification or destruction of the aircraft; or

(*3*) Changes of pilots or crewmembers. Every pilot and crewmember participating in an overflight must have prior Customs approval either through the initial application or a supplemental application before commencement of the aircraft's first overflight with that pilot or crew member;

(B) Request permission from Customs to fly to any airport that is not listed in the initial exemption application; and

(C) Retain on board the aircraft copies of the initial application for an exemption, all applicable supplemental applications filed, and all requests for additional landing privileges, as well as a copy of the letter from Customs approving each of these requests.

(b) *Eligibility and application procedures.*—(1) *Eligibility.* Private aircraft that arrive in the continental U.S. from areas south of the U.S. may seek an exemption from the special landing requirements of § 122.24 (overflight privileges), for either a single flight or for a number of flights over a period of two year. Private aircraft that carry restricted or prohibited merchandise are not eligible for this program. For Overflight Program purposes, the term ''private aircraft'' is defined at § 122.23(a).

(2) *Application procedure.*—(i) *Who applies for the overflight privilege.* Owners/operators of eligible private aircraft (see paragraph (b)(1) of this section) who want all or certain of their flights considered for participation in the Overflight Program should contact the following Customs office to request an application for exemption from the special landing requirements of § 122.24: U.S. Customs Service, Sealand Building, Overflight Program Center, 1210 Corbin Street, Elizabeth, New Jersey 07201. Customs Form (CF) 442 (Application for Exemption from Special Landing Requirements (Overflight) or General Aviation Telephonic Entry Program (GATE)) is the application form. The owner/operator applying for an exemption will provide on the application the personal identification information of pilot(s), members of the flight crew, and any individuals who will be the usual or anticipated passengers intended to be routinely carried onboard an Overflight-approved flight. Individual passengers who provide their personal information for inclusion on an aircraft owner's/operator's CF 442 must sign a Privacy Act waiver provided to them by the aircraft owner/operator that authorizes Customs to perform whatever checks are necessary to determine their eligibility for participation in the program and to advise the aircraft owner/operator as to whether the individual is approved. Customs will verify information through the Treasury Enforcement Communications System (TECS). The waiver is to be submitted to the aircraft owner/operator who will forward all the individual Privacy Act waivers with his CF 442 to Customs. By signing and submitting a CF 442, a private aircraft owner/operator acknowledges that the individuals identified on the form have been informed of the program's requirements to not carry restricted or prohibited merchandise on their person or in their baggage and of the penalties for failure to comply with these requirements, and agrees that he will not knowingly carry individuals who do not comply with the program's requirements on Overflight-approved flights.

(ii) *When to apply.* Generally, applications, with the individual Privacy Act waivers attached, must be submitted to the Overflight Program Center at least 30 days prior to the date of the first scheduled flight and addenda or modifications reflecting material changes must be submitted at least 30 days prior to the date of the flight for which the changes are in effect. However, in cases involving air ambulance operations when emergency situations arise or where other flights of private aircraft entail the non-emergency transport of persons seeking medical treatment in the U.S., Customs may accept exemption requests when the aircraft is in flight through a Federal Aviation Administration Flight Service Station.

(3) *Aircraft inspection requirement.* Applicants for the Overflight Program must agree to make the subject aircraft available for Customs inspection to determine if the aircraft is capable of meeting Customs requirements for the proper conduct of an overflight privilege. Inspections may be conducted during the review of an initial application or at any time during the term of an exemption.

(c) *Notice of action on application; appeal rights.* Applications will be evaluated based on the information provided on the CF 442 as verified by Customs. Following an evaluation of the information submitted and after consulting with the port director having jurisdiction over the airport designated for landing, the Overflight Program Center will notify the applicant within 30 days whether the application is approved or denied. In cases where the application is denied, notice will be in writing and state the reason(s) for denial, advise the applicant of its administrative appeal rights under paragraph (c)(2) of this section and of the alternate recourse of submitting a new application after waiting a period of 30 days, and recite the appeal procedures under paragraph (d)(3) of this section.

(1) *Grounds for denial.* The Overflight Program Center may deny an application for any of the following reasons:

(i) Failure of the applicant to meet the eligibility criteria, specified at paragraph (b)(1) of this section;

(ii) Evidence that the application contains false or misleading information concerning a material fact;

(iii) Evidence of criminal or dishonest conduct regarding the owner/operator of the aircraft or the designated pilot; or

(iv) A determination is made that the grant of an overflight privilege would endanger the revenue or otherwise invite circumvention of laws enforced by Customs.

(2) *Appeal rights.* Applicants denied overflight privileges have appeal rights,

and, upon receiving notice of the denial, may either:

(i) Submit a new application to the Overflight Program Center after waiting a period of 30 days from the date of issuance of the initial denial notice; or

(ii) Appeal the notice of denial in accordance with the administrative appeal procedures set forth in paragraph (d)(3) of this section.

(d) *Notice of revocation; appeal procedures.*—(1) *Revocation.* The Overflight Program Center may immediately revoke an exemption for any of the following reasons:

(i) The application contained false or misleading information concerning a material fact;

(ii) An approved individual or the owner/operator of the aircraft is subsequently indicted for, convicted of, or has committed acts which would constitute any felony or misdemeanor under United States Federal or State law. In the absence of an indictment, conviction, or other legal process, Customs must have probable cause to believe proscribed acts occurred;

(iii) Any individual carried on an Overflight-approved flight refuses or otherwise fails to follow any proper order of a Customs officer or any Customs order, rule, or regulation;

(iv) Reasonable grounds exist to believe that Federal rules and regulations pertaining to public health or safety, Customs, or other inspectional activities have not been followed;

(v) Any individual carried on an Overflight-approved flight fails to adhere to the conditions or restrictions imposed by the Overflight Program; or

(vi) Continuation of the overflight privilege would endanger the revenue or otherwise invite circumvention of laws enforced by Customs.

(2) *Notice.* When a decision to revoke an exemption or to deny an applicant overflight privileges is made, the Overflight Program Center, after consulting with the port director having jurisdiction over the airport designated for landing, will notify the participant or applicant of the decision in writing. The notice of revocation or notice of denial and any subsequent notices of adverse determination will state the reason(s) for the adverse action, advise the participant or applicant of its administrative appeal rights and of the alternate recourse of submitting a new application after waiting a period of 30 days from the date of issuance of the initial notice of revocation or notice of denial, or any subsequent adverse determination, and recite the appeal procedures under paragraph (d)(3) of this section.

(3) *Appeal procedures.* An Overflight Program participant who receives notice of revocation or an applicant for overflight privileges who receives notice of denial may administratively appeal the initial notice of adverse action in writing within 10 calendar days of the date of issuance of the notice to the next level of administrative review. Appeals must be filed in duplicate and must set forth the appellant's responses to the grounds specified in the notice of adverse action or the subsequent notice of adverse determination issued by the Overflight Program Center.

(i) *The Director of Field Operations.* The first appeal is to the Director of Field Operations at the appropriate Customs Management Center, which will be specified by the Overflight Program Center in its notice of adverse action. Within 30 days of receipt of the appeal, the Director of Field Operations, or his designee, will make a determination regarding the appeal and notify the appellant of the decision in writing. If the determination is adverse to the appellant, the notice of adverse determination will contain the information specified at paragraph (d)(2) of this section. If the appellant wants to appeal the Director of Field Operation's adverse determination to the Assistant Commissioner, then the appellant must file the second appeal within 10 calendar days of the date of issuance of the Director of Field Operation's adverse determination.

(ii) *The Assistant Commissioner.* The second appeal is to the Assistant Commissioner, Office of Field Operations, U.S. Customs Service, 1300 Pennsylvania Avenue, Washington, D.C. 20229. Within 30 days of receipt of the appeal, the Assistant Commissioner, or his designee, will make a determination regarding the appeal and notify the appellant of the decision in writing. If the determination is adverse to the appellant, the notice of adverse determination will state the reason(s) for the adverse action.

5. In § 122.26, the second sentence is amended at the end before the period by adding the words '', unless they are participating in and in compliance with the GATE Program (*see* § 122.39)''.

6. In § 122.31:

(a) paragraph (a) is amended in the second sentence at the end before the period by adding the words ''or, if applicable, § 122.25''; and

(b) paragraph (c)(1) is amended in the second sentence by adding after the words ''place of first landing'' the words ''or, in cases of GATE-approved flights (*see* § 122.39), to the GATE Program Center as required''.

7. Section 122.36 is revised to read as follows:

**§ 122.36 Responsibility of aircraft commander.**

Generally, if Customs officers are not present when an aircraft lands in the U.S., the aircraft commander must hold the aircraft and all merchandise and baggage on the aircraft for inspection. Passengers and crewmembers must be kept in a separate place until they are authorized by Customs officers to depart. If the aircraft is participating in the GATE Program (*see* § 122.39), the participants onboard GATE-authorized flights may depart the landed aircraft with their personal effects, which must not include merchandise that requires the payment of Customs duties or merchandise that is restricted or prohibited, or monetary instruments in excess of $10,000; however, if the flight is ahead of schedule, they must remain on the aircraft until the time that was reported to be their estimated time of arrival.

8. A new § 122.39 is added in subprt D to read as follows:

**§ 122.39 The General Aviation Telephonic Entry (GATE) Program.**

(a) *Description of program.*—(1) *In general.* The General Aviation Telephonic Entry (GATE) Program is a program designed to facilitate the processing of certain pre-qualified frequent travelers on pre-registered general aviation aircraft arriving in the United States directly from Canada. Participation in the GATE Program is voluntary and requires participants to comply with the program's requirements, which include the pre-filing of certain personal information and arriving in the U.S. only at designated locations. In exchange for this cooperation, participants are exempted from the general Customs requirements for entry into the United States, contained at § 123.1 of this chapter. Because GATE flights are pre-cleared telephonically, GATE-approved flights may carry only individuals that are approved to participate in the GATE Program. Participants should be aware that failure to follow program requirements on GATE-approved flights can result in revocation of their participation in the program and may result in liability for certain civil and criminal penalties. Owners/operators participating in the GATE Program also should note that, although their applications may be approved for a period of years, particular flights may be denied GATE privileges because of the further conditions pertaining to landing rights airports, found at § 122.14(d).

(2) *GATE procedures.* The pilot of the GATE-approved flight provides Customs with the required advance notice of the flight's arrival. Customs then assigns the GATE-approved flight an advance arrival number which gives permission for the flight to land at a GATE-designated airport. Upon landing in the U.S., the participants onboard may depart the landed aircraft with their personal effects, which must not include merchandise that requires the payment of Customs duties or merchandise that is restricted or prohibited, or monetary instruments in excess of $10,000. However, if the flight is ahead of schedule, then all individuals must remain onboard the aircraft until the time that was reported to be their estimated time of arrival.

(b) *Eligibility and application procedures.*—(1) *Eligibility.*—(i) *Aircraft.* U.S.- and Canadian-registered general aviation aircraft that arrive in the United States directly from Canada are eligible to participate in the GATE Program. Aircraft transiting Canada are not eligible to participate in the GATE Program. Further, aircraft that will carry cargo or merchandise requiring the payment of Customs duties or merchandise that is restricted or prohibited, or monetary instruments in excess of $10,000 are not eligible for this program. For GATE Program purposes, the term ''general aviation aircraft'' means private aircraft, and certain commercial aircraft, consisting of small charter/air taxi aircraft and air ambulances that have a seating capacity for fifteen or fewer individuals, when such aircraft are not in commercial service. Aircraft accepted into the GATE Program maintain their eligibility status so long as they make at least one flight per year.

(ii) *Airports.* Airports already designated for GATE flights and other airports not previously considered may be requested on an application. In these later cases, the local port director will determine whether the airport specified is suitable to receive GATE flights by reviewing the facilities at the airport.

(iii) *Individuals.* The pilot(s), members of the flight crew, and corporate employees/officers who frequently travel on general aviation aircraft are individuals eligible to be carried on GATE-approved flights. Each individual must meet the following additional criteria:

(A) *Citizenship.* Each individual must be a:

*(1)* U.S. citizen;

*(2)* Permanent resident of the U.S.;

*(3)* Canadian citizen; or

*(4)* Landed immigrant in Canada from a Commonwealth country;

(B) *Admissibility into the U.S.* Each individual must demonstrate his right to be legally admitted into the United States by passing a ''face-to-face'' inspection with either a U.S. Immigration or Customs officer; and

(C) *Compliance with program requirements.* On GATE-approved flights, each individual must agree to carry all required personal identification and immigration documents and not to carry merchandise that requires the payment of Customs duties or merchandise that is restricted or prohibited, or monetary instruments in excess of $10,000.

(2) *Application procedure.*—(i) *Who applies for GATE entry privileges.* Owners/operators of eligible general aviation aircraft (see paragraph (b)(1)(i) of this section) who want all or certain of their flights considered for participation in the GATE Program should contact the following Customs office to request an application for GATE: U.S. Customs Service, Detroit Metropolitan Airport, GATE Program Center, International Terminal, Detroit, Michigan 48242. Customs Form (CF) 442 (Application for Exemption from Special Landing Requirements (Overflight) or General Aviation Telephonic Entry Program (GATE)) is the application form. The owner/operator applying for the GATE Program will provide on the application the personal identification information of individual frequent travelers who will be carried onboard a GATE-approved flight. Individual frequent travelers who provide their personal information for inclusion on an aircraft owner's/operator's CF 442 must sign a Privacy Act waiver provided to them by the aircraft owner/operator that authorizes Customs to perform whatever checks are necessary to determine their eligibility for participation in the program and to advise the aircraft owner/operator as to whether the individual is approved. Customs will verify information through the Treasury Enforcement Communications System (TECS). The waiver is to be submitted to the aircraft owner/operator who will forward all the individual Privacy Act waivers with his CF 442 to Customs. By signing and submitting a CF 442, a general aviation aircraft owner/operator acknowledges that individual frequent travelers identified on the form have been informed of the program's requirements to not carry merchandise that requires the payment of Customs duties or merchandise that is restricted or prohibited, or monetary instruments in excess of $10,000 and of the penalties for failure to comply with these requirements. Further, the applicant agrees that he will not allow his participating aircraft to carry individuals who are not listed on their application and approved by Customs and that he will not allow any individuals to carry merchandise or monetary instruments that violate the program's requirements on GATE-approved flights.

(ii) *When to apply.* Generally, applications, with the individual Privacy Act waivers attached, must be submitted to the GATE Program Center at least 30 days prior to the date of the first scheduled flight and addenda or modifications reflecting material changes must be submitted at least 30 days prior to the date of the flight for which the changes are in effect.

(c) *Notice of action on application; appeal rights.* Applications will be evaluated based on the information provided on the CF 442 as verified by Customs. Following an evaluation of the information submitted, the GATE Program Center will notify the applicant within 30 days whether the application is approved or denied. In cases where the application is denied, notice will be in writing and state the reason(s) for denial, advise the applicant of its administrative appeal rights under paragraph (c)(2) of this section and of the alternate recourse of submitting a new application after waiting a period of 30 days, and recite the appeal procedures under paragraph (d)(3) of this section.

(1) *Grounds for denial.* The GATE Program Center may deny an application for any of the following reasons:

(i) Failure of the applicant to meet the eligibility criteria, specified at paragraph (b)(1) of this section;

(ii) Evidence that the application contains false or misleading information concerning a material fact;

(iii) Evidence of criminal or dishonest conduct regarding the owner/operator of the aircraft or the designated pilot; or

(iv) A determination is made that the grant of GATE privileges would endanger the revenue or otherwise invite circumvention of laws enforced by Customs.

(2) *Appeal rights.* Applicants denied participation in the GATE Program have appeal rights, and, upon receiving notice of the denial, may either:

(i) Submit a new application to the GATE port director after waiting a period of 30 days from the date of issuance of the initial notice of denial; or

(ii) Appeal the notice of denial in accordance with the administrative appeal procedures set forth in paragraph (d)(3) of this section.

(d) *Notice of revocation; appeal procedures.*—(1) *Revocation.* The GATE Program Center may immediately revoke an aircraft's participation in the GATE Program for any of the following reasons:

(i) The application contained false or misleading information concerning a material fact;

(ii) A participating individual or the owner/operator of the aircraft is subsequently indicted for, convicted of, or has committed acts which would constitute any felony or misdemeanor under United States Federal or State law. In the absence of an indictment, conviction, or other legal process, Customs must have probable cause to believe proscribed acts occurred;

(iii) A participating individual allows an unauthorized individual to use his GATE certificate or other approved form of identification;

(iv) A participating individual refuses or otherwise fails to follow any proper order of a Customs officer or any Customs order, rule, or regulation;

(v) Reasonable grounds exist to believe that Federal rules and regulations pertaining to public health or safety, Customs, or other inspectional activities have not been followed;

(vi) A participating individual fails to adhere to the conditions or restrictions imposed by the GATE Program; or

(vii) Continuation of GATE privileges would endanger the revenue or otherwise invite circumvention of laws enforced by Customs.

(2) *Notice.* When a decision to revoke participation in the GATE Program or deny an applicant GATE privileges is made, the GATE Program Center will notify the participant or applicant of the decision in writing. The notice of revocation or notice of denial and any subsequent notices of adverse determination will state the reason(s) for the adverse action, advise the participant or applicant of its administrative appeal rights and of the alternate recourse of submitting a new application after waiting a period of 30 days from the date of issuance of the initial notice of revocation or notice of denial or any subsequent adverse determination, and recite the appeal procedures under paragraph (d)(3) of this section.

(3) *Appeal procedures.* A GATE Program participant who receives notice of revocation or an applicant for GATE privileges who receives notice of denial may administratively appeal the initial notice of adverse action in writing within 10 calendar days of the date of issuance of the notice to the next level of administrative review. Appeals must be filed in duplicate and must set forth the appellant's responses to the grounds specified in the notice of adverse action or the subsequent notice of adverse determination issued by the Detroit Port Director.

(i) *The Detroit Port Director.* The first appeal is to the Detroit Port Director, U.S. Customs Service, Detroit Metropolitan Airport, GATE Program Center, International Terminal, Detroit, Michigan 48242. Within 30 days of receipt of the appeal, the Detroit Port Director, or his designee, will make a determination regarding the appeal and notify the appellant of the decision in writing. If the determination is adverse to the appellant, the notice of adverse determination will contain the information specified at paragraph (c)(2) of this section. If the appellant wants to appeal the Detroit Port Director's adverse determination, then the appellant must file the second appeal within 10 calendar days of the date of issuance of the Detroit Port Director's adverse determination.

(ii) *The Assistant Commissioner.* The second appeal is to the Assistant Commissioner, Office of Field Operations, U.S. Customs Service, 1300 Pennsylvania Avenue, Washington, D.C. 20229. Within 30 days of receipt of the appeal, the Assistant Commissioner, or his designee, will make a determination regarding the appeal and notify the appellant of the decision in writing. If the determination is adverse to the appellant, the notice of adverse determination will state the reason(s) for the adverse action.

## PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The authority citation for part 123 continues to read in part as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624. Section 123.1 also issued under 19 U.S.C. 1459;

* * * * *

2. In § 123.1, paragraph (a)(2) is amended at the end before the period by adding the words ''except in the case of a GATE-approved flight''.

**Raymond W. Kelly,**

*Commissioner of Customs.*

Approved: July 30, 2001.

**Timothy E. Skud,**

*Acting Deputy Assistant Secretary of the Treasury.*

[FR Doc. 01–19337 Filed 8–2–01; 8:45 am]

BILLING CODE 4820–02–P

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**[REG–107151–00]**

**RIN 1545–AX99**

## Constructive Transfers and Transfers of Property to a Third Party on Behalf of a Spouse

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

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations under section 1041 of the Internal Revenue Code relating to the tax treatment of certain redemptions, during marriage or incident to divorce, of stock owned by a spouse or former spouse. This document also provides notice of a public hearing on the proposed regulations.

**DATES:** Written comments must be received by November 1, 2001. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for Friday, December 14, 2001, must be received by November 23, 2001.

**ADDRESSES:** Send submissions to: CC:ITA:RU (REG–107151–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:ITA:U (REG–107151–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslist.html. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Edward C. Schwartz, (202) 622–4960; concerning submissions and the hearing, Guy Traynor, (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for

review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collection of information should be received by October 2, 2001. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in § 1.1041–2(c) of these regulations. Section 1.1041–2(c) permits spouses or former spouses to treat a redemption of stock of one spouse (the first spouse) as a transfer of that stock to the other spouse (the second spouse) in exchange for the redemption proceeds and a redemption of the stock from the second spouse in exchange for the redemption proceeds if they reflect their intent to do so in a written agreement or if a divorce or separation agreement requires such treatment. This information must be retained and is required for the spouses or former spouses to report properly the tax consequences of the redemption. The likely respondents are individuals.

*Estimated total annual reporting and/or recordkeeping burden:* 500 hours.

*Estimated average annual burden hours per respondent and/or recordkeeper:* 30 minutes.

*Estimated number of respondents and/or recordkeepers:* 1,000.

*Estimated annual frequency of responses:* On occasion.

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

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Background**

Section 1041 was added to the Internal Revenue Code by section 421 of the Tax Reform Act of 1984 (1984 Act), Public Law 98–369. Section 1041(a) provides that no gain or loss will be recognized on a transfer of property from an individual to (or in trust for the benefit of) a spouse or former spouse if the transfer is incident to a divorce. Under section 1041(b), for purposes of subtitle A, the transferee is treated as having acquired the property by gift from the transferor with a carryover basis from the transferor.

The House Report accompanying the 1984 Act states:

> The current rules governing transfers of property between spouses or former spouses incident to divorce have not worked well and have led to much controversy and litigation. Often the rules have proved a trap for the unwary * * *.
>
> Furthermore, in divorce cases, the government often gets whipsawed. The transferor will not report any gain on the transfer, while the recipient spouse, when he or she sells, is entitled under [*United States* v. *Davis*, 370 U.S. 65 (1962)] to compute his or her gain or loss by reference to a basis equal to the fair market value of the property at the time received.
>
> The committee believes that to correct these problems and make the tax laws as unintrusive as possible with respect to relations between spouses, the tax laws governing transfers between spouses and between former spouses should be changed. * * *
>
> The bill provides that the transfer of property to a spouse incident to a divorce will be treated, for income tax purposes, in the same manner as a gift. Gain (including recapture income) or loss will not be recognized to the transferor, and the transferee will receive the property at the transferor's basis * * *. Thus, uniform Federal income tax consequences will apply to these transfers notwithstanding that the property may be subject to differing state property laws.

H.R. Rep. No. 432, 98th Cong., 2d Sess., Part 2, at 1491–92 (1984) (House Report).

By enacting the carryover basis rules in section 1041(b), Congress has, in essence, provided spouses with a mechanism for determining between themselves which one will pay tax upon the disposition of property outside the marital unit. For example, assume Spouse A owns appreciated property that he or she wishes to sell to a third party. The spouses may agree that Spouse A will sell the property to the third party and recognize the gain. Any subsequent transfer from Spouse A to Spouse B of the sales proceeds will be nontaxable under section 1041. In the alternative, the spouses may agree that Spouse A will first transfer the property to Spouse B. This transfer is nontaxable under section 1041, with Spouse B taking a carryover basis in the transferred property. Spouse B will then recognize the gain or loss on the sale of the property to the third party because a sale to a third party is not covered by section 1041. In this latter scenario, the tax consequences of the sale are shifted to Spouse B.

Under § 1.1041–1T(c), Q&A–9, of the Temporary Income Tax Regulations (Q&A–9), section 1041 will apply to a transfer of property by the transferor spouse to a third party that is on behalf of the other spouse or former spouse (nontransferor spouse) if: (i) The transfer to the third party is required by the divorce or separation instrument; (ii) the transfer to the third party is pursuant to the written request of the nontransferor spouse; or (iii) the transferor spouse receives from the nontransferor spouse a written consent or ratification of the transfer to the third party. If Q&A–9 applies, a direct transfer of property to a third party is treated first as a transfer to the nontransferor spouse in a transaction governed by section 1041 and then as an immediate transfer by the nontransferor spouse to the third party in a transaction not governed by section 1041.

Q&A–9 has provided spouses and former spouses with the ability to shift between themselves the tax consequences of a sale of property outside the marital unit. However, the questions of what standard should be applied for purposes of determining whether a transfer of property is, or is not, ''on behalf of'' the nontransferor spouse for purposes of section 1041, and whether the same standard should be applied for purposes of determining the tax treatment of the transferor spouse and the nontransferor spouse under provisions of the Internal Revenue Code other than section 1041, have become the source of much confusion and litigation in the context of certain stock redemptions. For instance, the United States Court of Appeals for the Ninth Circuit in *Arnes* v. *United States,* 981 F.2d 456 (9th Cir. 1992) (regarding the tax treatment of the transferor spouse), and the Tax Court in *Arnes* v.

*Commissioner,* 102 T.C. 522 (1994) (regarding the tax treatment of the nontransferor spouse), applied different standards to determine the tax treatment of the transferor spouse and the nontransferor spouse, respectively, in the context of a redemption of stock owned by the transferor spouse. Consequently, neither spouse was taxed on the redemption proceeds, a result that Congress clearly sought to avoid in enacting section 1041. See House Report at 1491.

In the *Arnes* cases, a husband and wife owned all the stock of a corporation. The divorce instrument required the wife to tender her stock to the corporation for redemption. The Ninth Circuit held that the redemption was on behalf of the husband and, therefore, was not taxable to the wife, because it found that the husband had an obligation under the property settlement to purchase the wife's stock and the husband was benefitted by the redemption. The Ninth Circuit did not address the tax treatment of the husband, although it implied that the husband might be taxable on the redemption.

The Tax Court in *Arnes* addressed whether the husband was taxable on the redemption. The Tax Court stated that the question was whether the husband had a constructive dividend; that is, whether he had a ''primary and unconditional obligation'' to purchase the stock. The court concluded that the husband did not have a primary and unconditional obligation to purchase the wife's stock and, therefore, the redemption of the wife's stock did not result in a constructive dividend to the husband. This conclusion, the court stated, was supported by the IRS's position in Rev. Rul. 69–608, 1969–2 C.B. 42. Rev. Rul. 69–608 holds that a corporation's redemption of its stock from a shareholder (the first shareholder) results in a constructive distribution to another shareholder (the second shareholder) if the redemption is in satisfaction of the second shareholder's primary and unconditional obligation to purchase the first shareholder's stock. The majority opinion of the Tax Court in *Arnes* expressly declined to opine as to whether the ''on behalf of'' standard of Q&A–9 is the same as the ''primary and unconditional obligation'' standard applicable to constructive distributions.

The uncertainty has persisted in subsequent cases. In *Read* v. *Commissioner,* 114 T.C. 14 (2000), the Tax Court rejected equating the ''primary and unconditional obligation'' standard with the ''on behalf of'' standard in Q&A–9 for purposes of determining the tax consequences of a stock redemption to the transferor spouse. The Tax Court concluded that the appropriate standard for determining whether a transfer of property to a third party by a transferor spouse was on behalf of the nontransferor spouse under Q&A–9 was whether the transferor spouse was acting ''as the representative of'' or ''in the interest of'' the nontransferor spouse or whether the transfer satisfied a liability or an obligation of the nontransferor spouse. See also *Blatt* v. *Commissioner,* 102 T.C. 77 (1994).

Because of these inconsistent standards, the regulations must be amended to provide greater certainty in determining which spouse will be taxed on certain stock redemptions occurring during marriage or incident to divorce.

**Explanation of Provisions**

The proposed regulations apply where, under current law, the ''primary and unconditional obligation'' standard applicable to constructive distributions governs the tax consequences to one spouse or former spouse of a redemption of stock owned by the other spouse or former spouse. Accordingly, the proposed regulations provide that they apply only where the nontransferor spouse owns stock of the redeeming corporation either immediately before or immediately after the stock redemption.

The proposed regulations provide that, if a corporation redeems stock owned by a transferor spouse, and the transferor spouse's receipt of property in respect of such stock is treated, under applicable tax law, as resulting in a constructive distribution to the nontransferor spouse, then the stock redeemed is deemed first to be transferred by the transferor spouse to the nontransferor spouse and then to be transferred by the nontransferor spouse to the redeeming corporation. Section 1041 applies to the deemed transfer of the stock by the transferor spouse to the nontransferor spouse, provided the requirements of section 1041 are otherwise satisfied with respect to such deemed transfer. Section 1041 does not apply to the deemed transfer of stock from the nontransferor spouse to the redeeming corporation. Any property actually received by the transferor spouse from the redeeming corporation in respect of the redeemed stock is deemed first to be transferred by the redeeming corporation to the nontransferor spouse in exchange for the stock in a transaction to which section 1041 does not apply, and then to be transferred by the nontransferor spouse to the transferor spouse in a transaction to which section 1041 applies, provided the requirements of section 1041 are otherwise satisfied with respect to such deemed transfer. The tax consequences of the deemed transfer of stock from the nontransferor spouse to the redeeming corporation in exchange for the redemption proceeds from the redeeming corporation are determined under applicable provisions of the Internal Revenue Code (other than section 1041) as if such transfers had actually occurred.

Where applicable law does not treat a transferor spouse's receipt of property in respect of stock redeemed as resulting in a constructive distribution to the nontransferor spouse, the form of the stock redemption is respected. In other words, the transferor spouse and the redeeming corporation are respected as parties to the redemption transaction, and thus the transferor spouse, not the nontransferor spouse, is treated as a party to the redemption.

The approach of the proposed regulations recognizes that applicable tax law currently imposes the primary and unconditional obligation standard, which has its origins in well-established case law including *Wall* v. *United States,* 164 F.2d 462 (4th Cir. 1947), and *Sullivan* v. *United States,* 363 F.2d 724 (8th Cir. 1966), for determining whether a shareholder has received a constructive distribution. The proposed regulations are designed to remove inconsistencies caused by the simultaneous potential application of the on behalf of standard of Q&A–9 for one spouse and the primary and unconditional obligation standard of the case law for the other spouse. Thus, for example, if the rules of the proposed regulations had applied in the *Arnes* case, because the husband did not have a primary and unconditional obligation to purchase the wife's stock, the redemption would have been taxed in accordance with its form with the result that the wife would have incurred the tax consequences of the redemption.

The proposed regulations provide a special rule that permits spouses and former spouses to treat a redemption of the transferor spouse's stock as a deemed transfer of the redeemed stock by the transferor spouse to the nontransferor spouse and then a deemed transfer of the redeemed stock by the nontransferor spouse to the redeeming corporation, and to treat any property actually received by the transferor spouse from the redeeming corporation in respect of the redeemed stock as first transferred by the redeeming corporation to the nontransferor spouse in exchange for the stock and then to be transferred by the nontransferor spouse to the transferor spouse. The special

rule will apply if a divorce or separation instrument, or a written agreement between the transferor spouse and the nontransferor spouse, requires the transferor spouse and the nontransferor spouse to file their Federal income tax returns in a manner that reflects that the transferor spouse transferred the redeemed stock to the nontransferor spouse in exchange for the redemption proceeds and the corporation redeemed the stock from the nontransferor spouse in exchange for the redemption proceeds. Such divorce or separation instrument must be effective, or the written agreement must be executed by both spouses or former spouses, prior to the date on which the nontransferor spouse files such spouse's first timely filed Federal income tax return for the year that includes the date of the redemption, but no later than the date such return is due (including extensions). The special rule is provided to give spouses and former spouses a means of ensuring the application of those Federal income tax consequences that would have resulted had applicable tax law treated the transferor spouse's stock redemption as resulting in a constructive distribution to the nontransferor spouse.

**Proposed Effective Date**

The proposed regulations are applicable to redemptions of stock on or after the date the regulations in this section are published as final regulations, except for redemptions of stock that are pursuant to instruments in effect before the date the regulations in this section are published as final regulations. For redemptions of stock before the date the regulations in this section are published as final regulations and redemptions of stock that are pursuant to instruments in effect before the date the regulations in this section are published as final regulations, see § 1.1041–1T(c), A–9. However, these regulations will be applicable to redemptions described in the preceding sentence if the spouses or former spouses execute a written agreement on or after August 3, 2001, that satisfies the requirements of paragraph (c) of these regulations with respect to such redemption.

**Special Analysis**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) and electronic comments that are submitted timely to the IRS. The IRS is also interested in receiving comments regarding the proper treatment of transfers of property to third parties by a spouse or former spouse other than transfers under these proposed regulations that solely govern certain redemptions of stock owned by a spouse or former spouse. Further, comments are specifically requested concerning the effective date provisions in the proposed regulations. All comments will be available for public inspection and copying.

A public hearing has been scheduled for December 14, 2001, at 10:00 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit timely written or electronic comments and must submit an outline of the topics to be discussed and the time to be devoted to each topic (preferably a signed original and eight (8) copies) by November 23, 2001.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

**Drafting Information**

The principal author of these regulations is Edward C. Schwartz of the Office of the Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

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

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

## PART 1—INCOME TAXES

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

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

**Par. 2.** In § 1.1041–1T, paragraph (c) is amended by adding a sentence at the end of A–9 to read as follows:

### § 1.1041–1T Treatment of transfer of property between spouses or incident to divorce (temporary).

* * * * *

(c) * * *

A–9: * * * This A–9 shall not apply to transfers to which § 1.1041–2 applies.

* * * * *

**Par. 3.** Section 1.1041–2 is added to read as follows:

### § 1.1041–2 Certain redemptions of stock.

(a) *In general*—(1) *Redemptions of stock resulting in constructive distributions.* Notwithstanding Q&A–9 of § 1.1041–1T(c), if a corporation redeems stock owned by a spouse or former spouse (transferor spouse), and the transferor spouse's receipt of property in respect of such redeemed stock is treated, under applicable tax law, as resulting in a constructive distribution to the other spouse or former spouse (nontransferor spouse), then the stock redeemed shall be deemed first to be transferred by the transferor spouse to the nontransferor spouse and then to be transferred by the nontransferor spouse to the redeeming corporation. Any property actually received by the transferor spouse from the redeeming corporation in respect of the redeemed stock shall be deemed first to be transferred by the redeeming corporation to the nontransferor spouse in exchange for the redeemed stock and then to be transferred by the nontransferor spouse to the transferor spouse.

(2) *Redemptions of stock not resulting in constructive distributions.*

Notwithstanding Q&A–9 of § 1.1041–1T(c), if a corporation redeems stock owned by the transferor spouse, and the transferor spouse's receipt of property in respect of such redeemed stock is not treated, under applicable tax law, as resulting in a constructive distribution to the nontransferor spouse, then the form of the stock redemption shall be respected for Federal income tax purposes. Therefore, the transferor spouse and the redeeming corporation will be respected as engaging in a redemption transaction to which the nontransferor spouse is not a party.

(b) *Tax consequences*—(1) *Transfers described in paragraph (a)(1).* The tax consequences of each deemed transfer described in paragraph (a)(1) of this section are determined under applicable provisions of the Internal Revenue Code as if the parties had actually made such transfers. Accordingly, section 1041 applies to any deemed transfer of the stock and redemption proceeds between the transferor spouse and the nontransferor spouse, provided the requirements of section 1041 are otherwise satisfied with respect to such deemed transfer. Section 1041, however, will not apply to any deemed transfer of stock by the nontransferor spouse to the redeeming corporation in exchange for the redemption proceeds. See section 302 for rules relating to the tax consequences of certain corporate redemptions.

(2) *Transfers described in paragraph (a)(2).* Section 1041 will not apply to any of the transfers described in paragraph (a)(2) of this section. See section 302 for rules relating to the tax consequences of certain stock redemptions.

(c) *Special rule.* Notwithstanding applicable tax law, a transferor spouse's receipt of property in respect of redeemed stock will be treated as resulting in a constructive distribution to the nontransferor spouse for purposes of paragraph (a)(1) of this section if a divorce or separation instrument, or a written agreement between the transferor spouse and the nontransferor spouse, requires the transferor spouse and the nontransferor spouse to file their Federal income tax returns in a manner that reflects that the transferor spouse transferred the redeemed stock to the nontransferor spouse in exchange for the redemption proceeds and the corporation redeemed the stock from the nontransferor spouse in exchange for the redemption proceeds. Such divorce or separation instrument must be effective, or written agreement must be executed by both spouses or former spouses, prior to the date on which the nontransferor spouse files such spouse's first timely filed Federal income tax return for the year that includes the date of the stock redemption, but no later than the date such return is due (including extensions).

(d) *Limited scope.* Paragraphs (a) and (c) of this section shall apply only to stock redemptions where, either immediately before or immediately after the stock redemption, the nontransferor spouse owns directly stock of the redeeming corporation.

(e) *Examples.* The provisions of this section may be illustrated by the following examples:

*Example 1.* Corporation X has 100 shares outstanding. A and B each own 50 shares. A and B divorce. The divorce instrument requires B to purchase A's shares, and A to sell A's shares to B, in exchange for $100x. Corporation X redeems A's shares for $100x. Assume that, under applicable tax law, the stock redemption results in a constructive distribution to B. Paragraph (a)(1) of this section applies to the transfers of stock and redemption proceeds in connection with the redemption transaction. Accordingly, A will be treated as transferring A's stock of Corporation X to B in a transfer to which section 1041 applies (assuming the requirements of section 1041 are otherwise satisfied). B will be treated as transferring the Corporation X stock B is deemed to have received from A to Corporation X in exchange for $100x in an exchange to which section 1041 does not apply and sections 302(d) and 301 apply, and B will be treated as transferring the $100x to A in a transfer to which section 1041 applies.

*Example 2.* Assume the same facts as *Example 1,* except that the divorce instrument requires A to sell A's shares to Corporation X in exchange for a note. B guarantees Corporation X's payment of the note. Assume that, under applicable tax law, B does not have a primary and unconditional obligation to purchase A's stock. Also assume that the special rule of paragraph (c) of this section does not apply to the transfer of stock and redemption proceeds in connection with the redemption transaction. Under applicable tax law, the stock redemption does not result in a constructive distribution to B, because B does not have a primary and unconditional obligation to purchase A's stock. Paragraph (a)(1) of this section does not apply to the transfers of stock and redemption proceeds in connection with the redemption transaction. Accordingly, under paragraphs (a)(2) and (b)(2) of this section, the tax consequences of the redemption will be determined in accordance with its form as a redemption of A's shares by Corporation X. See section 302.

*Example 3.* Assume the same facts as *Example 2*, except that the divorce instrument provides as follows: ''A and B agree that A's Federal income tax return for the year that includes the date of the redemption will reflect that A transferred A's shares of Corporation X to B in exchange for the redemption proceeds of $100x and B's Federal income tax return for such year will reflect that Corporation X redeemed such shares from B in exchange for such proceeds.'' By virtue of the special rule of paragraph (c) of this section, the redemption is treated as resulting in a constructive distribution to B. Accordingly, A will be treated as transferring A's stock of Corporation X to B in a transfer to which section 1041 applies (assuming the requirements of section 1041 are otherwise satisfied). B will be treated as transferring the Corporation X stock B is deemed to have received from A to Corporation X in exchange for $100x in an exchange to which section 1041 does not apply and sections 302(d) and 301 apply, and B will be treated as transferring the $100x to A in a transfer to which section 1041 applies.

(f) *Effective date.* Except as otherwise provided in this paragraph (f), this section is applicable to redemptions of stock on or after the date these regulations are published as final regulations in the **Federal Register**, except for redemptions of stock that are pursuant to instruments in effect before the date these regulations are published as final regulations in the **Federal Register**. For redemptions of stock before the date these regulations are published as final regulations in the **Federal Register** and redemptions of stock that are pursuant to instruments in effect before the date these regulations are published as final regulations in the **Federal Register**, see § 1.1041–1T(c), A–9. However, this section will be applicable to redemptions described in the preceding sentence of this paragraph (f) if the spouses or former spouses execute a written agreement on or after August 3, 2001 that satisfies the requirements of paragraph (c) of this section with respect to such redemption.

**Robert Wenzel,**

*Deputy Commissioner of Internal Revenue.*

[FR Doc. 01–19224 Filed 8–2–01; 8:45 am]

BILLING CODE 4830–01–P

## POSTAL SERVICE

## 39 CFR Part 111

## Delivery of Mail to a Commercial Mail Receiving Agency

**AGENCY:** Postal Service.

**ACTION:** Notice of proposed rule; extension of comment period.

**SUMMARY:** The Postal Service published in the **Federal Register** (66 FR 36224–36226) on July 11, 2001, a proposal to add section D042.2.8 to the Domestic Mail Manual to identify when an office business center (OBC)(sometimes called corporate executive center) or part of its operation is considered a commercial mail receiving agency for postal purposes. The Postal Service requested

comments by August 10, 2001. Due to a request for additional time, the Postal Service is extending the comment period to September 17, 2001.

**DATES:** Comments on the proposed rule change must be received on or before September 17, 2001.

**ADDRESSES:** Written comments should be mailed to Manager, Delivery Operations, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 7142, Washington, DC 20260–2802. Comments by email or fax will not be accepted. Copies of all written comments will be available for inspection and copying between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Roy E. Gamble, (202) 268–3197.

**SUPPLEMENTARY INFORMATION:** A representative of the OBC industry has requested an extension of time to file comments regarding the proposal published on July 11. The extension is requested to permit individual owners and officers of OBC and other interested parties to familiarize themselves with the proposal and, should they wish, prepare individual comments. The Postal Service believes that the public interest will be served by the fullest practicable exposition of views concerning this issue and accordingly extends the time for comments until September 17, 2001.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 01–19473 Filed 8–2–01; 8:45 am]

BILLING CODE 7710–12–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[OR 62–7277b, OR 71–7286b, OR–01–001b; FRL –7018–1]**

### Approval and Promulgation of State Implementation Plans: Oregon

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by Lane Regional Air Pollution Authority (LRAPA), through Oregon Department of Environmental Quality (ODEQ), for the purpose of improving the clarity, effectiveness, and enforceability of Oregon's SIP. The SIP revisions were submitted by the State to satisfy certain Federal Clean Air Act requirements under section 110. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency believes this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule and in the technical support document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period; therefore any party interested in commenting on this action should do so at this time.

**DATES:** Written comments must be received in writing on or before September 4, 2001.

**ADDRESSES:** Written comments should be addressed to: Debra Suzuki, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101. Copies of the state submittals we are acting on in this action and other information supporting this action are available at the following addresses for inspection during normal business hours. Any interested person wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day: Environmental Protection Agency, Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101; Oregon Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204–1390; and Lane Regional Air Pollution Authority, 1010 Main Street, Springfield, Oregon 97477.

**FOR FURTHER INFORMATION CONTACT:** Debra Suzuki, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–0985.

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

Dated: July 13, 2001.

**Ronald A. Kreizenbeck,**

*Acting Regional Administrator, Region 10.*

[FR Doc. 01–19321 Filed 8–2–01; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

### 46 CFR Part 221

**[Docket No. MARAD–2001–10256]**

**RIN 2133–AB44**

### Denial of Vessel Transfer to Foreign Registry Upon Revocation of Fishery Endorsement

**AGENCY:** Maritime Administration, Transportation.

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

**SUMMARY:** The Maritime Administration (MARAD, we, our, or us) is proposing regulations to amend 46 CFR 221.15 to state that approvals will not be granted for the transfer of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel to a foreign registry or operation under authority of a foreign country when the vessel's fishery endorsement has been revoked as a result of the fishing capacity reduction program for crab fisheries established by the Secretary of Commerce. Pub. L. 106–554 requires that the Secretary of Transportation shall refuse to grant the approval required under section 9(c)(2) of the Shipping Act of 1916 for the placement of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel under foreign registry or the operation of such vessel under the authority of a foreign country when the vessel's fishery endorsement has been revoked under the Secretary of Commerce's fishing capacity reduction program. The intended effect of this rulemaking is to clearly state in the regulation that approvals required under section 9(c)(2) of the1916 Act will not be granted in the circumstances described.

**DATES:** You should submit your comments early enough to ensure that Docket Management receives them not later than October 2, 2001.

**ADDRESSES:** Your comments should refer to docket number [MARAD–2001–10256]. You may submit your comments in writing to: Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 7th St., SW, Washington, DC 20590. You may also submit them electronically via the Internet at *http://dmses.dot.gov/submit/.* You may call Docket Management at (202) 366–9324 and visit the Docket Room from 10 a.m. to 5 p.m., EST., Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** Edmund T. Sommer, Jr., Chief, Division

of General and International Law at (202) 366–5181. You may send mail to Mr. Sommer at Maritime Administration, Office of Chief Counsel, Room 7221, 400 Seventh Street, SW, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

## Comments

*How Do I Prepare and Submit Comments?*

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments. We encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments. Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

*How Can I Be Sure That My Comments Were Received?*

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Docket Management will return the postcard by mail.

*How Do I Submit Confidential Business Information?*

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, Maritime Administration, at the address given above under **FOR FURTHER INFORMATION CONTACT.** You should mark ''CONFIDENTIAL'' on each page of the original document that you would like to keep confidential. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send comments containing information claimed to be confidential business information, you should include a cover letter setting forth with specificity the basis for any such claim.

*Will the Agency Consider Late Comments?*

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date.

*How Can I Read the Comments Submitted By Other People?*

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket Room are indicated above in the same location. You may also see the comments on the Internet. To read the comments on the Internet, take the following steps: Go to the Docket Management System (DMS) Web page of the Department of Transportation (http://dms.dot.gov/). On that page, click on ''search.'' On the next page (http://dms.dot.gov/search/), type in the five-docket number shown at the beginning of this document. The docket number for this document is [10256]. After typing the docket number, click on ''search.'' On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

## Background

Pub. L. 106–554 requires the Secretary of Commerce to implement a fishing reduction program for crab fisheries included in the Fishery Management Plan for Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands. The Secretary of Commerce must notify the Secretary of Transportation which vessels are being removed from the fishery and request that the Secretary of Transportation revoke the vessel's fishery endorsement and refuse permission to transfer the vessel to a foreign flag.

Section 9 of the Shipping Act, 1916, as amended, (46 App. U.S.C. 808) governs the transfer of any documented vessel, or any vessel the last documentation of which was under the laws of the United States, to a foreign registry or operation of that vessel under the authority of a foreign country. This rulemaking proposes to amend the general approval granted under 46 CFR 221.15. We propose to amend § 221.15 to state that approval to place under foreign registry or to operate under the authority of a foreign country a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel that has had its fishery endorsement revoked pursuant to Appendix D of PL 106–554, 114 Stat 2763 will not be granted.

## Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. The Department of Transportation and MARAD are committed to plain language in government writing; therefore, we have written this NPRM in plain language. Our goal is to provide a clear regulation. We invite your comments on how to make this proposed rule easier to understand.

## Rulemaking Analyses and Notices

*Executive Order 12866 and DOT Regulatory Policies and Procedures*

We have reviewed this notice of proposed rulemaking under Executive Order 12866 and have determined that this is not a significant regulatory action. Additionally, this NPRM is not likely to result in an annual effect on the economy of $100 million or more. The purpose of this NPRM is to ensure that Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels who lose their fishery endorsement in the Fishery Management Plan for Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands will not operate under foreign flag or under the authority of a foreign country.

This NPRM is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979). The costs and benefits associated with this rulemaking are considered to be so minimal that no further analysis is necessary. Because the economic impact, if any, should be minimal, further regulatory evaluation is not necessary.

*Regulatory Flexibility Act*

This NPRM will not have a significant economic impact on a substantial number of small entities. This NPRM only implements a statutory mandate to deny approval for a transfer of a vessel to a foreign registry or operation under authority of a foreign country when the vessel's fishery endorsement has been revoked. This rule does not impose a significant economic impact because owners of Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels who lose their fishery endorsement have been compensated through the crab fisheries buy-out program.

Therefore, we certify that this NPRM will not have a significant economic impact on a substantial number of small entities.

*Federalism*

We have analyzed this final rule in accordance with the principles and criteria contained in E.O. 13132 (''Federalism'') and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. These regulations have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Therefore, consultation with State and local officials was not necessary.

*Environmental Impact Statement*

We have analyzed this NPRM for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical exclusions provision in section 4.05 of Maritime Administrative Order (''MAO'') 600–1, Procedures for Considering Environmental Impacts, 50 FR 11606 (March 22, 1985), the preparation of an Environmental Assessment, and an Environmental Impact Statement, or a Finding of No Significant Impact for this NPRM is not required.

*Executive Order 13175*

MARAD does not believe that this NPRM will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Therefore, the funding and consultation requirements of this Executive Order do not apply.

*Unfunded Mandates Reform Act of 1995*

This NPRM does not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This NPRM is the least burdensome alternative that achieves the objective of the rule.

*Paperwork Reduction Act*

This NPRM does not contain information collection requirements.

*Regulation Identifier Number (RIN)*

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number is contained in the heading of this document to cross-reference this action with the Unified Agenda.

**List of Subjects in 46 CFR Part 221**

Administrative practice and procedure, Maritime carriers, Mortgages, Penalties, Reporting and recordkeeping requirements, Uniform system of accounts, Trusts and trustees.

Accordingly, MARAD proposes to amend 46 CFR part 221 to read as follows:

## PART 221—REGULATED TRANSACTIONS INVOLVING DOCUMENTED VESSELS AND OTHER MARITIME INTERESTS

1. The authority citation for part 221 continues to read as follows: : 46 App. U.S.C. 802, 803, 808, 835, 839, 841a, 1114(b), 1195; 46 U.S.C. chs. 301 and 313; 49 U.S.C. 336; 49 CFR 1.66.

2. Section 221.15 is amended by adding an introductory paragraph to read as follows:

**§ 221.15 Approval for transfer of registry or operation under authority of a foreign country or for scrapping in a foreign country.**

In no case will approval be granted to place under foreign registry or to operate under the authority of a foreign country a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel that has had its fishery endorsement revoked pursuant to Appendix D of Public Law 106–554, 114 Stat 2763. Subject to this exclusion, approval requests will be considered as set forth in this section:

* * * * *

Dated: July 27, 2001.

By Order of the Acting Deputy Maritime Administrator.

**Murray A. Bloom,**

*Acting Secretary, Maritime Administration.*

[FR Doc. 01–19195 Filed 8–2–01; 8:45 am]

BILLING CODE 4910–81–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

**[CC Docket No. 98–67; DA 01–1555]**

### Provision of Improved Telecommunications Relay Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; correction.

**SUMMARY:** The Commission published a document in the **Federal Register** of July 19, 2001. The Commission now corrects the date for reply comments reflected in that document which sought additional comment on the provision of improved Telecommunications Relay Service and additional issues associated with IP Relay.

**FOR FURTHER INFORMATION CONTACT:** Dana Jackson, (202) 418–2247 (voice), (202) 418–7898 (TTY). This document is available to individuals with disabilities requiring accessible formats (electronic ASCII text, Braille, large print, and audio) by contacting Brian Millin at (202) 418–7426 (voice), (202) 418–7365 (TTY), or by sending an email to *access@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** The Federal Communications Commission published a document seeking comment on WorldCom's Petition and additional issues associated with IP Relay. In the FR Doc. 01–18054 (66 FR 37631, July 19, 2001) in column 3, correct the **DATES** caption to read as follows:

**DATES:** Comments are due on or before July 30, 2001 and reply comments are due on or before August 20, 2001.

Federal Communications Commission.

**Karen Peltz Strauss,**

*Deputy Chief, Consumer Information Bureau.*

[FR Doc. 01–19344 Filed 8–2–01; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 49 CFR Part 71

**[OST Docket No. OST–2001–10287]**

**RIN 2105–AD03**

### Standard Time Zone Boundary in the State of North Dakota: Proposed Relocation of Morton County

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** At the request of the Chairman of the Board of County Commissioners for Morton County, ND, DOT proposes to relocate the boundary between mountain time and central time in the State of North Dakota. DOT proposes to relocate the boundary in order to place all of Morton County in the central time zone.

**DATES:** Comments should be received by September 17, 2001, to be assured of consideration. Comments received after

that date will be considered to the extent practicable. If the time zone boundary is changed as a result of this rulemaking, the effective date would be no earlier than 2:00 a.m. MDT Sunday, October 28, 2001, which is the changeover from daylight saving to standard time.

**ADDRESSES:** You may submit your comments and related material by only one of the following methods:

(1) By mail to the Docket Management Facility (OST–2001–10287), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329. Public Hearing: A public hearing will be chaired by a representative of DOT at the City Hall Auditorium, 400 Main Avenue, New Salem, ND on Tuesday, August 28, 2001, at 7:30 p.m. mountain daylight time (8:30 p.m. central daylight time). The hearing will be informal and will be tape-recorded for inclusion in the docket. Persons who desire to express opinions or ask questions at the hearings do not have to sign up in advance or give any prior notification. To the greatest extent practicable, the DOT representative will provide an opportunity to speak for all those wishing to do so.

**FOR FURTHER INFORMATION CONTACT:** Joanne Petrie, Office of the Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, Room 10424, 400 Seventh Street, Washington, DC 20590, (202) 366–9315.

**SUPPLEMENTARY INFORMATION:**

## Background

Under the Standard Time Act of 1918, as amended by the Uniform Time Act of 1966 (15 U.S.C. 260–64), the Secretary of Transportation has authority to issue regulations modifying the boundaries between time zones in the United States in order to move an area from one time zone to another. The standard in the statute for such decisions is ''regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in interstate or foreign commerce.''

## Petition for Rulemaking

In a petition dated April 9, 2001, the Chairman of the Board of County Commissioners for Morton County asked the Department of Transportation to move the western portion of Morton County, North Dakota, from the mountain time zone to the central time zone. In support of the petition, the Chairman noted the following factors:

''The City of Mandan is the largest city in Morton County (with over 66% of the county's population according to the 2000 Census) and operates on Central Time. Virtually all the supplies for the balance of the county come out of Mandan or Bismarck, North Dakota, which is in the central time zone.

Virtually all county residents travel to Mandan or Bismarck for medical services, shopping, entertainment, or to do business with county or state government.

Commercial airline services are based in Bismarck, North Dakota and require county residents to travel there to catch flights to other parts of the United States.

Most all television and radio stations broadcast from Mandan or Bismarck and the only daily newspaper in the area is published in Bismarck, North Dakota which is just across the Missouri River from Mandan.

The County Commissioners put the time issue to a straw vote in the June 13, 2000 Primary Election. Only the five (5) precincts that operated on mountain time voted on the time issue, Yes 625, No 572. There are twelve precincts in the county on central time. The commission held a meeting on the time issue in July 2000 and only one (1) person showed up to request the balance of the county in Mountain Time Zone. March 6, 2001 the commission held another meeting on the time issue based on the people wanting the commission to request the time change for the balance of the county. 46 persons attended the meeting with 28 expressing their opinion favoring to change the entire county to the Central Time Zone and 18 expressing their opinion that they wished to keep the balance of the county in the Mountain Time Zone. Most all the people that attended the meeting were from the precincts voting in the June 13, 2000 Primary Election.

Geographically, Morton County is well suited to be in the Central Time Zone. Oliver County directly north of us operates in Central Time Zone and Mercer County north and west of us is considering changing to Central Time zone.''

Under DOT procedures to change a time zone boundary, the Department will generally begin a rulemaking proceeding if the highest elected officials in the area make a prima facie case for the proposed change. DOT has determined that the Resolution of the Chairman of the County Commissioners of Morton County, ND makes a prima facie case that warrants opening a proceeding to determine whether the change should be made. Consequently, in this notice of proposed rulemaking, DOT is proposing to make the requested change and is inviting public comment.

Although the Chairman of the County Commissioners of Morton County, ND has submitted sufficient information to begin the rulemaking process, the decision whether actually to make the change will be based upon information received at the hearing or submitted in writing to the docket. Persons supporting or opposing the change should not assume that the change will be made merely because DOT is making the proposal. We are not bound either to accept or reject the proposal of Morton County at the present time in the proceeding. The Department here issues no opinion on the merits of the County's request. Our decision will be made on the basis of information developed during the rulemaking proceeding.

## Impact on Observance of Daylight Saving Time

This time zone proposal does not directly affect the observance of daylight saving time. Under the Uniform Time Act of 1966, as amended, the standard time of each time zone in the United States is advanced one hour from 2:00 a.m. on the first Sunday in April until 2:00 a.m. on the last Sunday in October, except in any State that has, by law, exempted itself from this observance.

## Regulatory Analysis & Notices

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

rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The rule primarily affects the convenience of individuals in scheduling activities. By itself, it imposes no direct costs. Its impact is localized in nature.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This proposal, if adopted, would primarily affect individuals and their scheduling of activities. Although it would affect some small businesses, not-for-profits and, perhaps, several small governmental jurisdictions, it would not be a substantial number. In addition, the change should have little, if any, economic impact.

Therefore, the Office of the Secretary certifies under 5 U.S.C. 605(b) that this proposed rule would not, if adopted, have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Joanne Petrie at (202) 366–9315.

**Collection of Information**

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

**Federalism**

We have analyzed this proposed rule under E.O. 12612 and have determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership, (58 FR 58093; October 28, 1993) govern the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Environment**

This rulemaking is not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and, therefore, an environmental impact statement is not required.

**List of Subjects in 49 CFR Part 71**

Time zones.

For the reasons discussed above, the Office of the Secretary proposes to amend title 49 part 71 to read as follows:

## PART 71—[AMENDED]

1. The authority citation for Part 71 would continue to read:

**Authority:** Secs. 1–4, 40 Stat. 450, as amended; sec. 1, 41 Stat. 1446, as amended; secs. 2–7, 80 Stat. 107, as amended; 100 Stat. 764; Act of Mar. 19, 1918, as amended by the Uniform Time Act of 1966 and Pub. L. 97–449, 15 U.S.C. 260–267; Pub. L. 99–359; 49 CFR 159(a), unless otherwise noted.

2. Paragraph (a) of § 71.7, Boundary line between central and mountain zones, would be revised to read as follows:

**§ 71.7 Boundary line between central and mountain zones.**

(a) *Montana-North Dakota.* Beginning at the junction of the Montana-North Dakota boundary with the boundary of the United States and Canada southerly along the Montana-North Dakota boundary to the Missouri River; thence southerly and easterly along the middle of that river to the midpoint of the confluence of the Missouri and Yellowstone Rivers; thence southerly and easterly along the middle of the Yellowstone River to the north boundary of T. 150 N., R. 104 W.; thence east to the northwest corner of T. 150 N., R. 102 W.; thence south to the southwest corner of T. 149 N., R. 102 W.; thence east to the northwest corner of T. 148 N., R. 102 W.; thence south to the northwest corner of 147 N., R. 102 W.; thence east to the southwest corner of T. 148 N., R. 101 W., thence south to the middle of the Little Missouri; thence easterly and northerly along the middle of that river to the midpoint of its confluence with the Missouri River; thence southerly and easterly along the middle of the Missouri River to the midpoint of its confluence with the northern land boundary of Oliver County; thence, west along the northern county line to the northwest boundary; thence south along the western county line to the southwest boundary; thence west along the northern county boundary of Morton County; thence south along the western county line and then east along the southern county boundary to the northwest corner of T. 140 N., R. 83 W.; thence south to the southwest corner of T. 140 N., R. 82 W.; thence east to the southeast corner of T. 140 N., R. 83 W.; thence south to the middle of the Heart River; thence easterly and northerly along the middle of that river to the southern boundary of T. 139 N., R. 82 W.; thence east to the middle of the Heart River; thence southerly and easterly along the middle of that river to the midpoint of the confluence of the Heart and Missouri Rivers; thence southerly and easterly along the middle of the Missouri River to the northern boundary of T. 130 N., R. 80 W.; thence west to the northwest corner of T. 130 N., R. 80 W.; thence

south to the North Dakota-South Dakota boundary; thence easterly along that boundary to the middle of the Missouri River.

* * * * *

Issued in Washington, D.C. on July 30, 2001.

**Rosalind Knapp,**

*Deputy General Counsel.*

[FR Doc. 01–19466 Filed 8–2–01; 8:45 am]

BILLING CODE 4910–63–P

# Notices

Federal Register

Vol. 66, No. 150

Friday, August 3, 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

### Lake Tahoe Basin Federal Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on August 20, 2001, at the Vahalla Building, Tallac Historic Site, Highway 89, South Lake Tahoe, CA. This Committee, established by the Secretary of Agriculture on December 15, 1998, (64 FR 2876) is chartered to provide advice to the secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

**DATES:** The meeting will be held August 21, 2001, beginning at 9 a.m. and ending at 4 p.m.

**ADDRESSES:** The meeting will be held at Vahalla, Tallac Historic Site, Highway 89, South Lake Tahoe, CA.

**FOR FURTHER INFORMATION CONTACT:** Maribeth Gustafson or Jeannie Stafford, Lake Tahoe Basin Management Unit, Forest Service, 870 Emerald Bay Suite 1, South Lake Tahoe, CA 96150, (530) 573–2642.

**SUPPLEMENTARY INFORMATION:** The committee will jointly with the Federal Interagency Partnership's Lake Tahoe Basin Executives Committee and the Tahoe Regional Executive Committee. Items to be covered on the agenda include: (1) Review and prioritization of the USFS Restoration Act Project List; (2) The Federal Partnership role; and (3) open public comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before and after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: July 20, 2001.

**Maribeth Gustafson,**

*Acting Deputy Forest Supervisor.*

[FR Doc. 01–19419 Filed 8–2–01; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### Notice of Proposed Change to Section IV of the Virginia Field Office Technical Guide

**AGENCY:** Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

**ACTION:** Notice of availability of proposed changes in the Virginia NRCS Field Office Technical Guide for review and comment.

**SUMMARY:** It has been determined by the NRCS State Conservationist for Virginia that changes must be made in the NRCS Field Office Technical Guide specifically in practice standards: #356, Dike; #666, Forest Stand Improvement; #410, Grade Stabilization Structure, #436, Irrigation Storage Reservoir; #449, Irrigation Water Management; #466, Land Smoothing; #590, Nutrient Management; #516, Pipeline; #350, Sediment Basin; #572, Spoil Spreading; #633, Waste Utilization; #638, Water and Sediment Control Basin; #641, Water Table Control; and #614, Watering Facility to account for improved technology. These practices will be used to plan and install conservation practices on cropland, pastureland, woodland, and wildlife land.

**DATES:** Comments will be received on or before September 4, 2001.

**FOR FURTHER INFORMATION CONTACT:** Inquire in writing to M. Denise Doetzer, State Conservationist, Natural Resources Conservation Service (NRCS), 1606 Santa Rosa Road, Suite 209, Richmond, Virginia 23229–5014; Telephone number (804) 287–1665; Fax number (804) 287–1736. Copies of the practice standards will be made available upon written request to the address shown above or on the Virginia NRCS web site *http://www.va.nrcs.usda.gov/DataTechRefs/Standards&Specs/EDITStds/EditStandards.htm.*

**SUPPLEMENTARY INFORMATION:** Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, the NRCS in Virginia will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Virginia regarding disposition of those comments and a final determination of change will be made to the subject standards.

Dated: July 18, 2001.

**L. Willis Miller,**

*Assistant State Conservationist/Programs, Natural Resources Conservation Service, Richmond, Virginia.*

[FR Doc. 01–19493 Filed 8–2–01; 8:45 am]

BILLING CODE 3410–16–P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to the Procurement List.

**SUMMARY:** This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**EFFECTIVE DATE:** September 4, 2001.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

**FOR FURTHER INFORMATION CONTACT:** Louis R. Bartalot (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** On March, 30, April 13, June 1, and June 8, 2001, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (66 F.R. 17406, 19136, 29769 and 30884) of

proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

**Commodity**

Mattress, High Density Lumbar
7210–00–NIB–0060
7210–00–NIB–0061

**Services**

Food Service Attendant
Alabama Air National Guard, HQ 117th Air Refueling Wing, Birmingham, Alabama
Food Service Attendant
Indiana Air National Guard, Hulman International Airport, Terre Haute, Indiana
Janitorial/Grounds Maintenance
At the following Locations:
U.S. Border Patrol, Laredo Sector, Laredo, Texas
U.S. Border Patrol Laredo South Station, Laredo, Texas
Laredo Border Patrol Traffic Checkpoint, Laredo, Texas
Border Patrol Sector Headquarters, 207 W. Del Mar Boulevard, Laredo, Texas
U.S. Border Patrol Station, Freer, Texas
U.S. Border Patrol Traffic Checkpoint, Freer, Texas
The Hebbronville Border Patrol Station, 802 N. Sigrid Street, Hebbronville, Texas
The Hebbronville Checkpoint, Hebbronville, Texas
The Border Patrol Traffic Checkpoint, Bruni, Texas
Laredo Sector Air Operations Hangar, Laredo, Texas
U.S. Border Patrol Station, San Antonio, Texas
Zapata Border Patrol Station, Zapata, Texas
Laredo North Border Patrol Station, 11119 N. McPherson Road, Laredo, Texas
Mailroom Operation
Department of Health and Human Services, Program Support Center Headquarters, Dallas, Texas

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

**Louis R. Bartalot,**

*Director, Program Analysis and Evaluation.*

[FR Doc. 01–19491 Filed 8–2–01; 8:45 am]

BILLING CODE 6353–01–P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to Procurement List.

**SUMMARY:** The Committee is proposing to add to the Procurement List commodities and servicess to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** September 4, 2001.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

**FOR FURTHER INFORMATION CONTACT:** Louis R. Bartalot, (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, entities of the Federal Government identified in this notice for each commodity or services will be required to procure the commodities and servicess listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

**Additions**

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

**Commodities**

First Aid Kits
6545–01–465–1800
6545–01–465–1823
6545–01–465–1846
6545–00–663–9032
6545–00–664–5313
6545–01–425–4663
*NPA:* The Lighthouse for the Blind in New Orleans New Orleans, Louisiana
*Government Agency:* GSA/Industrial Products Contracting Division
Inkjet Media—Small Format
7530–00–NIB–0593
7530–00–NIB–0594
7530–00–NIB–0595
7530–00–NIB–0596
7530–00–NIB–0597
*NPA:* Wiscraft Inc.—Wisconsin Enterprises for the Blind Milwaukee, Wisconsin
*Government Agency:* GSA/Office Supplies and Paper Products Commodity Center
Bag, Tote, Mesh
M.R. 512
*NPA:* New Mexico Industries for the Blind Albuquerque, New Mexico
*Government Agency:* Defense Commissary Agency
Brush, Pastry
M.R. 824
*NPA:* Alabama Industries for the Blind Talladega, Alabama
*Government Agency:* Defense Commissary Agency
Christmas Towel
M.R. 1050
*NPA:* Chester County Branch of the PAB Coatesville, Pennsylvania

*Government Agency:* Defense Commissary Agency
Impulse Merchandising Program (IMP)—Stage 1
M.R. 1733—Sachet Bags Assorted
M.R. 1735—Shower Rod Hook
M.R. 1737—Corkscrew Winger
M.R. 1739—Goo Gone
M.R. 1750—Picture Hanger Kit
M.R. 1752—Household Helper Kit
M.R. 1753—School/Home Supply Kit
M.R. 1757—Chopsticks
M.R. 1760—Bathmates Tummy Sponge
M.R. 1761—Bathmates Puppet Sponge
M.R. 1762—Sunfile Nail File
M.R. 1764—Okee Dokee Stickers
M.R. 1766—Seat Covers
M.R. 1768—Iron Bottom Cleaner Sticks
M.R. 1769—Coke Coaster
M.R. 1770—Coke/Garfield/Looney Toone Pad
M.R. 1777—Straw Hugger
M.R. 1778—Oreo/Cherrio Container
M.R. 1779—Potpourri Oil Crystal
M.R. 1785—Cup Hooks Assorted
M.R. 1786—EZ Bag Opener
M.R. 1790—Lint Mitt
M.R. 1791—Wild Cat Air Freshener
M.R. 1792—Sneaker Balls
M.R. 1793—Single Air Freshener Balls
M.R. 1794—Baby Book Magic
M.R. 1795—Baby Bath Floatee
M.R. 1797—First Aid Wipes Hydrogen
M.R. 1801—Magnified Tweezers
M.R. 1802—Mop and Broom Hook
M.R. 1804—Last Drop Ketchup
M.R. 1805—Mini Funnels
M.R. 1806—Tuna Disk
M.R. 1807—Cookie Cutter
M.R. 1810—Permanent Coffee Filter
M.R. 1818—Color Change Krazy Straw
M.R. 1821—Suction Hooks
M.R. 1822—Bleach Spout
M.R. 1823—Scented Tissue Holder
M.R. 1826—Pet Odor Absorber
M.R. 1827—Chow Clip
M.R. 1828—Milkbone Treat Holder
M.R. 1846—Skimmer
M.R. 1847—Slurp Spoon
M.R. 1849—Playing Cards
M.R. 1854—Soft Tip Spoons (2 Pack)
M.R. 1861—Retractable Leash
M.R. 1862—Cat Nip Toy
M.R. 1863—Night Guide
M.R. 1865—Perfect Patty Bag
M.R. 1866—Spray Scrubber
M.R. 1867—Sports Fizz Keeper
*NPA:* Winston-Salem Industries for the Blind Winston-Salem, North Carolina
*Government Agency:* Defense Commissary Agency
Impulse Merchandising Program (IMP)—Stage 2
M.R. 1502—Soap Saver
M.R. 1509—Toothbrush Holder
M.R. 1510—Toothbrush/Soap Holder
M.R. 1511—Hair Pic Pak
M.R. 1512—Combs, Bonus Pak
M.R. 1524—Computer/Audio Dustcloth
M.R. 1573—Hot-Cold Mask
M.R. 1607—Enabler Easy Open
M.R. 1608—Enabler Zipper/Button Pull
M.R. 1614—Mayo Knife
M.R. 1625—Note Pad, Magnetic
M.R. 1684—Lunchbox Fun Ice, Assortment
M.R. 1688—Enabler Lamp Switch
M.R. 1711—Moist Eye Glass Cleaner
M.R. 1712—Eye Make-Up Remover
M.R. 1713—Nail Polish Remover
M.R. 1741—Hand/Nail Brush
M.R. 1747—Beauty Rounds, 8 Count
M.R. 1748—Beauty Puff, 4 Pack
M.R. 1751—Beauty Wedges
M.R. 1762—Sunfile Nail File
M.R. 1766—Seat Covers
M.R. 1770—Coke/Garfield/Looney Toone Pad
M.R. 1797—First Aid Wipes Hydrogen
M.R. 1804—Last Drop Ketchup
*NPA:* Winston-Salem Industries for the Blind Winston-Salem, North Carolina
*Government Agency:* Defense Commissary Agency
Mop, Anglematic, Deluxe, Refill
M.R. 1039
*NPA:* The Lighthouse for the Blind, Inc. Seattle, Washington
*Government Agency:* Defense Commissary Agency
Mop, Flat w/Scrubber Refill
M.R. 1048
*NPA:* Arizona Industries for the Blind Phoenix, Arizona
New York City Industries for the Blind Brooklyn, New York
*Government Agency:* Defense Commissary Agency
Plumber's Helper
M.R. 1046
*NPA:* Winston-Salem Industries for the Blind Winston-Salem, North Carolina
*Government Agency:* Defense Commissary Agency
Thermometer, Digital, Poultry/Steak & Probe, Analog
M.R. 811
M.R. 812
M.R. 813
M.R. 817
*NPA:* The Chicago Lighthouse for People who are Blind or Visually Impaired Chicago, Illinois
*Government Agency:* Defense Commissary Agency
Salad Shaker
M.R. 11839
*NPA:* Winston-Salem Industries for the Blind Winston-Salem, North Carolina
*Government Agency:* Defense Commissary Agency
Soap Shipper
M.R. 431
*NPA:* Winston-Salem Industries for the Blind Winston-Salem, North Carolina
*Government Agency:* Defense Commissary Agency

**Services**

Grounds Maintenance
National Advocacy Center Columbia, South Carolina
*NPA:* The Genesis Center Sumter, South Caroline
*Government Agency:* DOJ/National Advocacy Center
Janitorial/Custodial
At the following Richmond, Virginia Locations:
1Lt Monteith USARC
Colonel Dervishian USARC
Richmond AFRC
*NPA:* Richmond Area Association for Retarded Citizens Richmond, Virginia
*Government Agency:* US Army Reserve Centers, Richmond, Virginia

**Louis R. Bartalot,**
*Director, Program Analysis and Evaluation.*

[FR Doc. 01–19492 Filed 8–2–01; 8:45 am]
BILLING CODE 6353–01–P

## DEPARTMENT OF COMMERCE

**[I.D. 072701B]**

## Submission for OMB Review; Comment Request

**SUMMARY:** The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**SUPPLEMENTARY INFORMATION:**

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Weather Modification Activities Reports.

*Form Number(s):* NOAA Forms 17–4 and 17–4A.

*OMB Approval Number:* 0648–0025.

*Type of Request:* Regular submission.

*Burden Hours*: 330.

*Number of Respondents*: 55.

*Average Hours Per Response*: 30 minutes per report, 5 hours a year per recordkeeper.

*Needs and Uses*: Weather Modification Activities Reports are required by Public Law 92–205, Section 6(b). All entities which engage in weather modification (e.g. cloud-seeding to enhance precipitation or disperse fog) are required to report various data to NOAA. NOAA maintains the data for use in scientific research, historical statistics, international reports, and other purposes.

*Affected Public*: Business or other for-profit organizations, individuals or households, not-for-profit institutions, Federal government, and State, Local, or Tribal government.

*Frequency*: On occasion.

*Respondent's Obligation*: Mandatory.

*OMB Desk Officer*: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 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 David Rostker, OMB Desk Officer, Room 10202, 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. 01–19221 Filed 8–2–01; 8:45 am]

BILLING CODE 3510–KD–S

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Order No. 1181]**

## Grant of Authority for Subzone Status; Atlantic Richfield Company (Oil Refinery) Long Beach, CA Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas*, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

*Whereas*, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

*Whereas*, an application from the Board of Harbor Commissioners of the Port of Long Beach, grantee of FTZ 50, for authority to establish special-purpose subzone status at the oil refinery complex of Atlantic Richfield Company in the Long Beach, California, area, was filed by the Board on December 14, 2000, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 71–2000, 65 FR 82320, 12/28/00); and,

*Whereas*, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

*Now, Therefore*, the Board hereby authorizes the establishment of a subzone (Subzone 50H) at the oil refinery complex of Atlantic Richfield Company, in the Long Beach, California, area, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings # 2709.00.1000–# 2710.00.1050, and # 2710.00.2500 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (examiners report, Appendix ''C'');

—Products for export;

—And, products eligible for entry under HTSUS # 9808.00.30 and #9808.00.40 (U.S. Government purchases).

Signed at Washington, DC, this 27th day of 2001.

**Faryar Shirzad,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

Attest:

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 01–19472 Filed 8–2–01; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Order No. 1180]**

## Grant of Authority for Subzone Status Deere & Company (Construction Equipment) Davenport, IA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas*, the Foreign-Trade Zones Act provides for '' * * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

*Whereas*, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

*Whereas*, the Quad-City Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 133, has made application to the Board for authority to establish special-purpose subzone status at the manufacturing facility (construction equipment) of Deere & Company, located in Davenport, Iowa (FTZ Docket 64–2000, filed 11/17/2000);

*Whereas*, notice inviting public comment has been given in the **Federal Register** (65 FR 76217, 12/6/2000); and,

*Whereas*, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application would be in the public interest;

*Now, Therefore*, the Board hereby grants authority for subzone status at the construction equipment manufacturing facility of Deere & Company, located in Davenport, Iowa (Subzone 133D), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 27th day of 2001.

**Faryar Shirzad,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

[FR Doc. 01–19471 Filed 8–2–01; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## International Trade Administration, Trade Development

## Environmental Technologies Trade Advisory Committee (ETTAC), Request for Nominations

**SUMMARY:** The Environmental Technologies Trade Advisory Committee (ETTAC) was established pursuant to provisions under Title IV of the Jobs Through Trade Expansion Act, 22. U.S.C. 2151, and under the Federal Advisory Committee Act, 5 U.S.C. App.2. ETTAC was first chartered on May 31, 1994. ETTAC serves as an advisory body to the Environmental Trade Working Group of the Trade Promotion Coordinating Committee, reporting directly to the Secretary of Commerce in his capacity as Chairman of the TPCC. ETTAC advises on the development and administration of policies and programs to expand United States exports of environmental technologies, goods, and services and products that comply with United States environmental, safety, and related requirements.

Membership in a committee operating under the Federal Advisory Committee Act must be balanced in terms of economic subsector, geographic location and company size. Committee members serve in a representative capacity, and must be able to generally represent the views and interests of a certain subsector of the U.S. environmental industry. We are seeking CEO, President or Executive Vice President-level company candidates. Members of the ETTAC have experience in exporting the full range of environmental technologies products and services including:

(1) Analytic Services

(2) Financial Services

(3) Water and Wastewater Services and Equipment
(4) Air Pollution Control/Monitoring Equipment
(5) Process and Prevention Technologies
(6) Environmental Energy Sources
(7) Solid and Hazardous Waste Equipment and Management
(8) Environmental Engineering and Consulting

The Secretary invites nominations to ETTAC of U.S. citizens who will represent U.S. environmental goods and services companies that trade internationally, or trade associations whose members are U.S. companies that trade internationally. Companies must be at least 51 percent beneficially-owned by U.S. persons. U.S.-based subsidiaries of foreign companies in general do not qualify for representation on the committee.

Nominees will be considered based upon their ability to carry out the goals of ETTAC's enabling legislation as further articulated in its charter. ETTAC's Charter is available on the internet at *http://www.environment.ita.doc.gov.* Priority will be given to a balanced representation in terms of point of view represented by various sectors, product lines, firm sizes and geographic areas. Appointments are made without regard to political affiliation.

If you are interested in nominating someone to become a member of ETTAC, please send the following information. Self-nominations are accepted.

(1) Name
(2) Title
(2) Work Phone; Fax; and, Email Address
(3) Company or Trade Association Name and Address
(4) Short Bio of the candidate
(5) Fact-sheet on the company or trade association providing a description of its business activities; company size (number of employees and annual sales); export markets served.

Nominees must be U.S. citizens, representing U.S. environmental goods and services firms that trade internationally or provide services in direct support of the international trading activities of other entities. Materials may be faxed to 202–482–5665; or mailed c/o ETTAC, U.S. Department of Commerce, 14th and Constitution, NW., Room 1003.

Deadline: This request will be open until December 31, 2001 from August 3, 2001.

**FOR FURTHER INFORMATION CONTACT:** Jane Siegel, Office of Environmental Technologies Exports, Room 1003, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; phone 202–482–5225.

Dated: July 27, 2001.

**Carlos M. Montoulieu,**

*Acting Deputy Assistant Secretary.*

[FR Doc. 01–19387 Filed 8–2–01; 8:45 am]

**BILLING CODE 3510–DR–P**

---

## DEPARTMENT OF COMMERCE

### National Oceanic and Atomspheric Administration

### National Estuarine Research Reserve System; Notice of Proposed Boundary Expansion for North Carolina National Estuarine Research Reserve

**AGENCY:** Estuarine Reserves Division, Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce.

**ACTION:** Notice of Proposed Boundary Expansion for the Rachel Carson component of the North Carolina National Estuarine Research Reserve.

**SUMMARY:** Notice is hereby given that the Estuarine Reserves Division of OCRM is considering a request by the North Carolina Division of Coastal Management to amend the boundary of the North Carolina National Estuarine Research Reserve. The boundary change will include 1.5-acre Sand Dollar Island and just over 400 acres of state waters in the North River Channel within the Rachel Carson component of the reserve. Because both areas are currently owned by the state, no acquisition is required.

**FOR FURTHER INFORMATION CONTACT:** Brian Badgley, Estuarine Reserves Division (N/ORM5), National Oceanic and Atmospheric Administration, SSMC4, Silver Spring, Maryland 20910; Phone (301) 713–3155, Extension 145.

**SUPPLEMENTARY INFORMATION:** The North Carolina National Estuarine Research Reserve (NCNERR) was designated in 1985 pursuant to section 315 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1461. The NCNERR is comprised of four components totaling 10,000 acres, including barrier islands, salt marsh and subtidal sand and mud habitats.

The North Carolina Division of Coastal Management has requested NOAA approval to amend the boundary of the Rachel Carson component of the NCNERR to include Sand Dollar Island and state waters in the North River Channel. Sand Dollar Island naturally accreted immediately adjacent to the reserve boundary approximately two years ago. Under North Carolina law, it is automatically associated with the reserve property and owned by the state. The North Carolina Division of Coastal Management currently manages the area. The island and associated salt marsh provide important nesting habitat for colonial water birds, but also has become popular among boaters for recreation. The inclusion of the island within reserve boundaries will allow the NCNERR to officially manage the area to minimize recreational impacts on the important habitats. The North River Channel divides the two major upland and salt marsh areas of the reserve. Its inclusion will create a more logical and defensible boundary, while increasing the amount of submerged habitat within the reserve for research and education purposes. The state is supportive of the inclusion of both areas within the reserve boundary. No land acquisition or deed transfer is required for this boundary expansion.

Any person wishing to comment on the proposed boundary expansion may forward written comments to Brian Badgley, Estuarine Reserves Division (N/ORM5), National Oceanic and Atmospheric Administration, 1305 East West Highway, Silver Spring, Maryland 20910. Comments must be submitted no later than September 4, 2001.

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves.

Dated: July 13, 2001.

**Ted I. Lillestolen,**

*Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.*

[FR Doc. 01–19399 Filed 8–2–01; 8:45 am]

**BILLING CODE 3510–08–P**

---

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[Docket Number: 000531160–1138–02]**

**RIN 0648–ZA89**

### Announcement of Graduate Research Fellowships in the National Estuarine Research Reserve System for Fiscal Year 2002

**AGENCY:** Estuarine Reserves Division (ERD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice.

**SUMMARY:** The Estuarine Reserves Division (ERD) of the Office of Ocean and Coastal Resource Management is soliciting applications for graduate fellowship funding within the National Estuarine Research Reserve System. This notice sets forth funding priorities, selection criteria, and application procedures.

The National Estuarine Research Reserve System of the National Oceanic and Atmospheric Administration (NOAA) announces the availability of Graduate Research Fellowships. ERD anticipates that 18 Graduate Research Fellowships will be competitively awarded to qualified graduate students whose research occurs within the boundaries of at least one Reserve. Minority students are encouraged to apply. Fellowships will start June 1, 2002. A later start date may be requested with justification and will be reviewed by ERD for approval.

**DATES:** Applications must be postmarked no later than *November 1, 2001*. Notification regarding the awarding of fellowships will be issued on or about March 1, 2002.

**ADDRESSES:** Erica Seiden, Program Specialist, NOAA/Estuarine Reserves Division, 1305 East-West Highway, N/ORM5, SSMC4, 11th Floor, Silver Spring, MD 20910, Attn: FY00 NERRS Research. Phone: 301–713–3155 ext. 172 Fax: 301–713–4363, internet: erica.seiden@noaa.gov. Web page: http://www.ocrm.nos.noaa.gov/nerr/fellow.html. See Appendix I for National Estuarine Research Reserve addresses.

**FOR FURTHER INFORMATION CONTACT:** For further information on specific research opportunities at National Estuarine Research Reserve sites, contact the site staff listed in Appendix I or the program specialist listed in the **ADDRESSES** section above. For application information, contact Erica Seiden of the Estuarine Reserves Division (see **ADDRESSES** above).

**SUPPLEMENTARY INFORMATION:**

## I. Authority and Background

Section 315 of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1461, establishes the National Estuarine Research Reserve System (NERRS). 16 U.S.C. 1461 (e)(1)(B) authorizes the Secretary of Commerce to make grants to any coastal state or public or private person for purposes of supporting research and monitoring within a National Estuarine Research Reserve that are consistent with the research guidelines developed under subsection (c). This program is listed in the Catalog of Federal Domestic Assistance (CFDA) under ''Coastal Zone Management Estuarine Research Reserves,'' Number 11.420.

## II. Information on Established National Estuarine Research Reserves

The NERRS consists of estuarine areas of the United States and its territories which are designated and managed for research and educational purposes. Each National Estuarine Research Reserve within the NERRS is chosen to reflect regional differences and to include a variety of ecosystem types in accordance with the classification scheme of the national program as presented in 15 CFR part 921.

Each Reserve supports a wide range of beneficial uses of ecological, economic, recreational, and aesthetic values which are dependent upon the maintenance of a healthy ecosystem. The sites provide habitats for a wide range of ecologically and commercially important species of fish, shellfish, birds, and other aquatic and terrestrial wildlife. Each Reserve has been designed to ensure its effectiveness as a conservation unit and as a site for long-term research and monitoring. As part of a national system, the Reserves collectively provide an excellent opportunity to address research questions and estuarine management issues of national significance. For a detailed description of the sites, contact the individual site staff or refer to the NERR internet Web site provided in the **ADDRESSES** section.

## III. Availability of Funds

Funds are expected to be available on a competitive basis to qualified graduate students for research within National Estuarine Research Reserves leading to a graduate degree. No more than two fellowships at any one site will be funded at any one time; based upon fellowships awarded in the 2001 funding cycle, we anticipate 18 openings for Fellowships in FY02. Fellowships are expected to be available at the following sites:

| NERR Site | Fellowships |
|---|---|
| Ashepoo Combahee | |
| Edisto Basin, SC | 1 |
| Apalachicola, FL | 1 |
| Chesapeake Bay, MD | 1 |
| Elkhorn Slough, CA | 1 |
| Grand Bay, MS | 1 |
| Great Bay, NH | 2 |
| Hudson River, NY | 1 |
| Jobos Bay, PR | 1 |
| Kachemak Bay, AK | 2 |
| Old Woman Creek, OH | 2 |
| Padilla Bay, WA | 1 |
| Rookery Bay, FL | 2 |
| Weeks Bay, AL | 1 |
| Wells, ME | 1 |

Because NOAA is an active partner in NERRS research, funds will be awarded through a cooperative agreement. NOAA may be involved in the award in the following manner:

The Estuarine Reserves Division (ERD), Office of Ocean and Coastal Resource Management, reserves the right to immediately halt activity under this award if it becomes obvious that award activities are not fulfilling the mission of the National Estuarine Research Reserve System. While day-to-day management is the responsibility of the recipient, frequent guidance and direction is provided by the Federal Government for the successful conduct of this award. Non-compliance with a Federally approved project may result in immediate halting of the award.

ERD generally will review and approve each stage of work annually before the next begins to assure that studies will produce viable information on which to form valid coastal management decisions.

All staff at NERRS sites are ineligible to submit an application for a fellowship under this Announcement. Federal funds requested must be matched by the applicant by at least 30% of the *TOTAL cost, not the Federal share, of the project.* Students receiving fellowship funding under this announcement will begin June 1, 2002.

## IV. Purpose and Priorities

NERR Research funds are provided to support management-related research projects that will enhance scientific understanding of the Reserve ecosystem, provide information needed by Reserve management and coastal management decision-makers, and improve public awareness and understanding of estuarine ecosystems and estuarine management issues (15 CFR 921.50).

The NERR Graduate Research Fellowship program is designed to fund high quality research focused on enhancing coastal zone management while providing students with an opportunity to contribute to the research or monitoring program at a particular Reserve site.

Research projects proposed in response to this announcement must: (1) Address coastal management issues identified as having local, regional, or national significance, described in the ''Scientific Areas of Support'' below; and (2) be conducted within one or more designated NERR sites.

Funding ($17,500 per year) is intended to provide any combination of research support, salary, tuition, supplies, or other costs as needed, including overhead. All current and prospective fellows will be eligible to receive $17,500 in federal funds. This amount is a $1,000 increase from previous funding years. Fellows will be expected to participate in the Reserve's research or monitoring program for up to a maximum of 15 hours per week. The work plan should be devised cooperatively with the Reserve's Research Coordinator. Fellows conducting multi-site projects may fulfill this requirement at one or a combination of sites but for no more than a total of 15 hours per week. This program may occur throughout the academic year or may be concentrated during a specific season.

*Scientific Areas of Support*

The NERRS program has identified the following as areas of nationally significant research interest. Proposed research projects submitted in response to this announcement must address one of the following topics (see #1 above):

- The effects of non-point source pollution on estuarine ecosystems;
- Evaluative criteria and/or methods for estuarine ecosystem restoration;
- The importance of biodiversity and effects of invasive species on estuarine ecosystems;
- Mechanisms for sustaining resources within estuarine ecosystems; or
- Socioeconomic research applicable to estuarine ecosystem management.

Each NERR has local issues of concern that fall within one of the topics above.

**Note:** It is strongly suggested that applicants contact the host Reserve (see Appendix I) for general information about the Reserve and its research needs and priorities as they relate to this announcement. Applicants should determine whether their proposed projects are relevant to the Reserve's site specific research needs.

## V. Guidelines for Application Preparation, Review, and Reporting Requirements

Applicants for ERD research fellowships must follow the guidelines presented in this announcement. Applications not adhering to these guidelines may be returned to the applicant without further review.

Applications for graduate fellowships in the NERRS are solicited annually for award the following fiscal year. Minority students are encouraged to apply. Application due dates and other pertinent information are contained in this announcement of research opportunities. *Applicants must submit an original and two (2) copies of each application and all supporting documents (curricula vitae, literature referenced, unofficial transcripts, etc.), excluding letters of reference which must come directly from their source.*

Applicants may request funding for up to three years; funding for years two and three will be made available based on availability of funds and satisfactory progress of research as determined by the Host NERR Research Staff and the student's faculty advisor, in consultation with ERD. The amount of the award is $17,500/annum which represents 70% of the *award total.* Requested overhead costs under NERRS fellowship awards are limited to $1,750 of the Federal amount. Requested Federal funds must be matched by at least 30 percent of the *award total* (ie. $7,500 match for $17,500 in Federal funds for a total project cost of $25,000).

Applicants who are selected for funding will be required to: (1) Work with the Research Coordinator or Reserve Manager to develop a plan to participate in the research or monitoring program for up to 15 hours per week; (2) submit semi-annual progress reports to ERD and the host Reserve before the end of each funding cycle on the research accomplishments to date; and (3) acknowledge NERRS support in all relevant scientific presentations and publications. In addition, fellows are strongly encouraged to publish their results in peer-reviewed literature and make presentations at scientific meetings.

*A. Applications*

Students admitted to or enrolled in a full-time Master's or Doctoral program at U.S. accredited universities are eligible to apply. Students should have completed a majority of their course work at the beginning of their fellowship and have an approved thesis research program.

Applicants Are Required To Submit

(1) An academic resume or a curriculum vitae that includes all graduate and undergraduate institutions (department or area of study, degree, and year of graduation), all publications (including undergraduate and graduate theses), awards or fellowships, and work/research experience;

(2) A cover letter from the applicant indicating current academic status, research interests, career goals, and how the proposed research fits into their degree program, *and it is strongly suggested that the results of discussions with host NERR staff regarding their contributions to the Reserve's research or monitoring program;*

(3) A titled research proposal (double-spaced in a font no smaller than 12-point courier) that includes an Abstract, Introduction, Methods and Materials, Project Significance, and Bibliography;

(4) A proposed budget (see Section B, Proposal Content, below for specific guidelines);

(5) An *unofficial* copy of all undergraduate and graduate transcripts;

(6) A signed letter of support from the applicant's graduate advisor indicating the advisor's contribution (financial and otherwise) to the applicant's graduate studies, and an assurance that the student is in good academic standing; and

(7) Two letters of recommendations (from other than the applicant's graduate advisor) sent directly from their source.

**Note:** Electronically transmitted letters of support are *not* acceptable.

One original and two (2) copies of the information requested above, excluding letters of reference and transcripts, must be submitted to the ERD Program Specialist at the address in the Addresses section. All materials must be postmarked no later than November 1, 2001. *Applications postmarked November 2, 2001 or later, will be returned without review.* Receipt of all applications will be acknowledged and a copy sent to the appropriate Reserve staff for review.

*B. Proposal Content*

The research proposal must contain the sections described below.

1. Title Page

The title page must include:

- Name, address, telephone number, fax number, email address of applicant, and date;
- Project title;
- Amount of funding requested;
- Name of graduate institution;
- Name of institution providing matching funds and amount of matching funds;
- Name, address, telephone number, fax number & email address of faculty advisor;
- NERR site where research is to be conducted; and
- Number of years of requested support.

If it is a multi-site project, the title page must indicate which Reserve will be the primary contact (''host Reserve'').

2. Abstract

The abstract must state the research objectives, scientific methods to be used, and the significance of the project

to a particular Reserve and the NERRS program. The abstract must be limited to *one double-spaced page.*

3. Project Description

The project description must be limited to *6 double-spaced pages* excluding figures. The main body of the proposal must include a detailed statement of the work to be undertaken and the following components:

(a) Introduction. This section should introduce the research setting and environment. It should include a brief review of pertinent literature and describe the research problem in relation to relevant coastal management issues and the research priorities. This section should also present the primary hypothesis upon which the project is focused, as well as any additional or component hypotheses which will be addressed by the research project.

(b) Methods. This section should state the method(s) to be used to accomplish the specific research objectives, including a systematic discussion of what, when, where, and how the data are to be collected, analyzed, and reported. Field and laboratory methods should be scientifically valid and reliable and should be accompanied by a statistically sound sampling scheme. Methods chosen should be justified and compared with other methods employed for similar work.

Techniques should allow the testing of the hypotheses, but should also provide baseline data related to ecological and management questions concerning the Reserve environment. Methods should be described concisely and techniques should be reliable enough to allow comparison with those made at different sites and times by different investigators. The methods must have proven their utility as indicators for natural or human-induced change.

Analytical methods and statistical tests applied to the data should be documented, thus providing a rationale for choosing one set of methods over alternatives. Quality control measures also should be documented (e.g., statistical confidence levels, standards of reference, performance requirements, internal evaluation criteria). The proposal should indicate by way of discussion how data are to be synthesized, interpreted and integrated into final work products.

A map clearly showing the study location and any other features of interest *must* be included; a U.S. Geological Survey topographic map, or an equivalent, is suggested for this purpose. Consultation with Reserve personnel to identify existing maps is strongly recommended.

(c) Project Significance. This section should provide a clear discussion of how the proposed research addresses state and national estuarine and coastal resource management issues and how the proposed research effort will enhance or contribute to improving the state of knowledge of the estuary; i.e., why is the proposed research important and how will the results contribute to coastal resource management? This section must also discuss the relation of the proposed research to the research priorities stated in Section IV. Applicability of research findings to other NERRS and coastal areas should also be mentioned. In addition, if the proposed research is part of a larger research project, the relationship between the two should be described.

4. Milestone Schedule

A milestone schedule is required. This schedule should show, in table form, anticipated dates for completing field work and data collection, data analysis, progress reports, the final technical report and other related activities. Use ''Month 1, Month 2, etc.'' rather than ''June, July, etc.,'' in preparing these charts.

5. Personnel and Project Management

The proposal must include a description of how the project will be managed, including the names and expertise of faculty advisors and other team members. Evidence of ability to successfully complete the proposed research should be supported by reference to similar efforts previously performed.

6. Literature Cited

This section should provide complete references for literature, research, and other appropriate published and unpublished documents cited in the text of the proposal.

7. Budget

The amount of Federal funds requested must be matched by the applicant by at least 30% of the *total* project cost (*i.e.*, $7,500 match for $17,500 in Federal funds for a total project cost of $25,000). Cash or in-kind contributions directly benefitting the research project may be used to satisfy the matching requirements. Overhead costs for these awards are limited to $1,750 of the Federal share (*i.e.*, $15,750 for project and $1,750 for overhead) and waived overhead costs may also be used as match. *Funds from other Federal agencies and NERRS staff salaries supported by Federal funds may not be used as match.* Requirements for the non-Federal share are contained in 15 CFR Part 14, Uniform administrative requirements for grants and agreements with institutions of higher education, hospitals, other nonprofit and commercial organizations. ERD strongly suggests that the applicant work with their institution's research office to develop their budget (see section D, below).

The applicant may request funds under any of the categories listed below as long as the costs are reasonable and necessary to perform research. The budget should contain itemized costs with appropriate narratives justifying proposed expenditures. *Budget categories are to be broken down as follows, clearly showing both Federal and non-Federal shares side by side:*

—Salary. The rate of pay (hourly, monthly, or annually) should be indicated. Salaries requested must be consistent with the institution's regular practices. The submitting organization may request that salary data remain confidential.

—Fringe Benefits. Fringe benefits (*i.e.*, social security, insurance, retirement) may be treated as direct costs as long as this is consistent with the institution's regular practices.

—Equipment. Fellowship funds may be approved for the purchase of equipment only if the following conditions are met: (a) A lease versus purchase analysis has been conducted by the applicant or the applicant's institution for equipment that costs greater than $5000 and the analyses indicate that purchase is the most economical method of procurement; (b) the equipment does not exist at the recipient's institution or the Reserve site; and, the equipment is essential for the successful completion of the project.

The justification must address each of these criteria. It must also describe the purpose of the equipment and provide a justification for its use. Additionally, it must include a list of equipment to be purchased, leased, or rented by model number and manufacturer, where known. At the termination of the fellowship, disposition of equipment will be determined by the NOAA Property Administrator.

—Travel. The type, extent, and estimated cost (broken down by transportation, lodging and per diem) of travel should be explained and justified in relation to the proposed research; the justification should also identify the person traveling. Travel expenses are limited to round trip travel to field research locations and

professional meetings to present the research results and should not exceed 40 percent of total award.

—Other Direct Costs. Other anticipated costs should be itemized under the following categories:

• *Materials and Supplies.* The budget should indicate in general terms the types of expendable materials and supplies required and their estimated costs;

• *Research Vessel or Aircraft Rental.* Include purpose, unit cost, duration of use, user, and justification;

• *Laboratory Space Rental.* Funds may be requested for use of laboratory space at research establishments away from the student's institution while conducting studies specifically related to the proposed effort;

• *Telecommunication Services and Reproduction Costs.* Include expenses associated with telephone calls, facsimile, copying, reprint charges, film duplication, etc.;

• *Computer Services.* The cost of unusual or costly computer services may be requested and must be justified.

—Indirect Costs. Requested overhead costs under NERRS fellowship awards are limited to $1,750 of the portion provided by Federal funding.

8. Requests for Reserve Support Services

On-site Reserve personnel sometimes can provide limited logistical support for research projects in the form of manpower, equipment, supplies, etc. Any request for Reserve support services, including any services provided as match, should be approved by the Reserve Manager or Research Coordinator prior to application submission and be included as part of the application package in the form of written correspondence. Reserve resources which are supported by Federal funds are not eligible to be used as match.

9. Coordination With Other Research in Progress or Proposed

ERD encourages collaboration and cost-sharing with other investigators to enhance scientific capabilities and avoid unnecessary duplication of effort. Applications should include a description of how the research will be coordinated with other research projects that are in progress or proposed, if applicable.

10. Permits

The applicant must apply for any applicable local, state or Federal permits. A copy of any permit applications and supporting documentation should be attached to the application as appendices. ERD must receive notification of the approval of the permit application before funding can be approved.

*C. Application Review and Evaluation*

All applications will be evaluated for scientific merit by ERD staff, the host Reserve scientific panel of no less than three reviewers from the scientific community, and the appropriate Research Coordinator and/or Reserve Manager. Criteria for evaluation are: (1) The quality of proposed research and its applicability to the NERRS Scientific Areas of Support listed earlier in this announcement (70%); (2) the research's applicability to specific Reserve research and resource management goals as they relate to the Scientific Areas of Support listed in this announcement(20%); and (3) academic excellence based on the applicant's transcripts and two letters of reference (10%). No more than two Fellowships will be awarded at any one time for any one Reserve. Final selection will be made by the Chief of the Estuarine Reserves Division.

*D. Fellowship Awards*

Awards are normally made to the fellow's graduate institution through the use of a cooperative agreement. Applicants whose projects are recommended for funding will be required to complete all necessary Federal financial assistance forms (SF–424, SF–424A, SF–424B, CD–511, and SF–LLL), which will be provided by ERD with the letter of fellowship notification. ERD recommends that all applicants work with their graduate institution during the development of their budget to ensure concurrence on budgetary issues (*e.g.* the use of salary and fringe benefits as match).

**VI. Other Requirements**

Recipients and sub-recipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards.

All applicants are subject to a name-check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either: (1) The delinquent account is paid in full; (2) A negotiated repayment schedule is established and at least one payment is received; or (3) Other arrangements satisfactory to the Department of Commerce (DOC) are made.

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding. In addition, any recipients who are past due for submitting acceptable final reports under any previous ERD-funded research will be ineligible to be considered for new awards until final reports are received, reviewed and deemed acceptable by ERD.

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the DOC. However, funding priority will be given to the additional years of multi-year proposals upon satisfactory completion of the current year of research.

Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matter; Drug-Free Workplace Requirements and Lobbying,'' and the following explanations are hereby provided:

*1. Nonprocurement Debarment and Suspension*

Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, ''Nonprocurement Debarment and Suspension,'' and the related section of the certification form prescribed above applies;

*2. Drug-Free Workplace*

Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, Subpart F, ''Government-wide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

*3. Anti-Lobbying*

Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on the use of appropriated funds to influence certain Federal contracting and financial transactions,''

and the lobbying section of the certification form which applies to applications/ bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

*4. Anti-Lobbying Disclosures*

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR part 28, Appendix B.

*5. Lower Tier Certifications*

Recipients shall require applicants/ bidders for sub-grants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying,'' and disclosure form SF–LLL, ''Disclosure of Lobbying Activities.'' The original form CD–512 is intended for the use of recipients. SF–LLL submitted by any tier recipient or sub-recipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-Made Equipment or Products: Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program should be American-made to the extent feasible.

Indirect Costs: The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or $1,500, whichever is less.

Pre-award Activities: If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover pre-award costs.

**VII. Classification**

This notice has been determined to be ''not significant'' for purposes of E.O. 12866.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Administrative Order 216–6.

This notice does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

This notice involves a collection of information subject to the requirements of the Paperwork Reduction Act. The requirements have been approved by the Office of Management and Budget (OMB) under control numbers 0348–0043, 0348–0044, 0348–0040 and 0348–0046.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

(Federal Domestic Assistance Catalog Number 11.420 Coastal Zone Management Estuarine Research Reserves)

Dated: July 26, 2001.

**Jamison S. Hawkins,**

*Deputy Assistant Administrator, National Ocean Service.*

**Appendix I. NERRS On-Site Staff**

*Alabama*

Mr. L.G. Adams, Manager, Dr. Scott Phipps, Research Coordinator, Weeks Bay National Estuarine Research Reserve, 11300 U.S. Highway 98, Fairhope AL 36532, (334) 928–9792, lg.adams@noaa.gov, scott.phipps@noaa.gov

*Alaska*

Mr. Glenn Seaman, Manager, Dr. Carl Schoch, Research Coordinator, Kachemak Bay National Estuarine Research Reserve, Department of Fish and Game, 2181 Kachemak Drive, Homer, AK 99603, (907) 235–6377, glenn_seaman@fishgame.state.ak.us, carl_schoch@fishgame.state.ak.us

*California*

Ms. Becky Christensen, Manager, Dr. Kerstin Wasson, Research Coordinator, Elkhorn Slough National Estuarine Research Reserve, 1700 Elkhorn Road, Watsonville, CA 95076, (831) 728–2822, research@elkhornslough.org

Ms. Tessa Roper, Assistant Manager, Mr. Greg Abbott, Acting Research Coordinator, Tijuana River National Estuarine Research Reserve, 301 Caspian Way, Imperial Beach, CA 92032, (619) 575–3613, trnerr@ixpres.com, troper@ixpres.com

*Delaware*

Mr. Mark Del Vecchio, Manager, Dr. Bob Scarborough, Research Coordinator, Delaware National Estuarine Research Reserve, Department of Natural Resources and Environmental Control, 818 Kitts Hummock Road, Dover, DE 19901, (302) 739–3436, mdelvecchio@state.de.us, bscarboroug@state.de.us

*Florida*

Mr. Woodward Miley II, Manager, Mr. Lee Edmiston, Research Coordinator, Apalachicola River National Estuarine Research Reserve, Florida Department of Environmental Protection, 350 Carroll Street, Eastpoint FL 32320, (850) 670–4783, woodard.miley@dep.state.fl.us, lee.edmiston@dep.state.fl.us

Mr. Kenneth Berk, Guana Tolomato Matanzas National Estuarine Research Reserve, Florida Department of Environmental Protection, 9741 Ocean Shore Boulevard, Marineland FL 32080, (904) 461–4054 kenberk@aug.com

Mr. Gary Lytton, Manager, Dr. Michael Shirley, Research Coordinator, Rookery Bay National Estuarine Research Reserve, Department of Environmental Protection, 300 Tower Road, Naples FL 34113–8059, (941) 417–6310, gary.lytton@dep.state.fl.us, michael.shirley@dep.state.fl.us

*Georgia*

Mr. Buddy Sullivan, Mr. Dorset Hurley, Sapelo Island National Estuarine Research Reserve, P.O. Box 15, Sapelo Island GA 31327, (912) 485–2251, buddy.sullivan@noaa.gov, dhurley@darientel.net

*Maine*

Mr. Paul Dest, Manager, Dr. Michele Dionne, Research Coordinator, Wells National Estuarine Research Reserve, 342 Laudholm Farm Road, Wells, ME 04090, (207) 646–1555, pauldest@loa.com, dionne@cybertours.com

*Maryland*

Ms. Carol Towle, Manager, Chesapeake Bay National Estuarine Research Reserve, MD, Department of Natural Resources, Tawes State Office Building E–2, 580 Taylor Avenue,

Annapolis, MD 21401, (410) 260–8713, ctowle@dnr.state.md.us

*Massachusetts*

Ms. Christine Gault, Manager, Dr. Chris Weidman, Research Coordinator, Waquoit Bay National Estuarine Research Reserve, Department of Environmental Management, P. O. Box 3092, Waquoit, MA 02536, (508) 457–0495, wbnerr@capecod.net, cweidman@capecod.net

*Mississippi*

Mr. Peter Hoar, Manager, Grand Bay National Estuarine Research Reserve, Department of Marine Resources 6005 Bayou Heron Road, Moss Point, MS 39562, (228) 475–7047, peter.hoar@dmr.state.ms.us

*New Hampshire*

Mr. Peter Wellenberger, Manager, Dr. Brian Smith, Research Coordinator, Great Bay National Estuarine Research Reserve, New Hampshire Department of Fish and Game, 225 Main Street, Durham, NH 03824, (603) 868–1095, pwellenberger@starband.net, bmsmith@starband.net

*New Jersey*

Mr. Michael De Luca, Manager, Dr. Michael Kennish, Research Coordinator, Mullica River National Estuarine Research Reserve, Institute of Marine and Coastal Sciences, Rutgers University 71 Dudley Road, New Brunswick, NJ 08903, (732) 932–6555, deluca@imcs.rutgers.edu, kennish@imcs.rutgers.edu

*New York*

Ms. Elizabeth Blair, Manager, Mr. Chuck Nieder, Research Coordinator, Hudson River National Estuarine Research Reserve, New York State Department of Environmental Conservation, c/o Bard College Field Station, Annandale-on-Hudson, NY 12504, (845) 758–7010, bablair@gw.dec.state.ny.us, wcnieder@gw.dec.state.ny.us

*North Carolina*

Dr. John Taggart, Manager, Dr. Steve Ross, Research Coordinator, North Carolina National Estuarine Research Reserve, 5001 Masonboro Loop Road, 1 Marvin Moss Lane, Wilmington, NC 28409, (910) 395–3905, taggartj@uncwil.edu, rosss@uncwil.edu

*Ohio*

Mr. Eugene Wright, Manager, Dr. David Klarer, Research Coordinator, Old Woman Creek National Estuarine Research Reserve, 2514 Cleveland Road, East, Huron, OH 44839, (419) 433–4601, gene.wright@noaa.gov, david.klarer@noaa.gov

*Oregon*

Mr. Michael Graybill, Manager, Dr. Steve Rumrill, Research Coordinator, South Slough National Estuarine Research Reserve, P. O. Box 5417, Charleston, OR 97420, (541) 888–5558, ssnerr@harborside.com

*Puerto Rico*

Ms. Carmen Gonzalez, Manager, Dr. Pedro Robles, Research Coordinator, Jobos Bay National Estuarine Research Reserve, Department of Natural and Environmental Resources, Call Box B, Aguirre, PR 00704, (787) 853–4617, carmen.gonzalez@noaa.gov, pedro.robles@noaa.gov

*Rhode Island*

Mr. Roger Greene, Manager, Dr. Chris Deacutis, Research Coordinator, Narragansett Bay National Estuarine Research Reserve, Department of Environmental Management, Box 151, Prudence Island, RI 02872, (401) 683–6780, roger.greene@noaa.gov, deacutis@etal.uri.edu

*South Carolina*

Mr. Michael D. McKenzie, Manager, Dr. Elizabeth Wenner, Research Coordinator, Ashepoo-Combahee-Edisto (ACE) Basin, South Carolina Department of Natural Resources, P.O. Box 12559, Charleston, SC 29412, (843) 762–5062, mckenziem@mrd.dnr.state.sc.us, wennere@mrd.dnr.state.sc.us

Dr. Dennis Allen, Manager, Dr. Drew Lohrer, Research Coordinator, North Inlet-Winyah Bay National Estuarine Research Reserve, Baruch Marine Field Laboratory, P. O. Box 1630, Georgetown, SC 29442, (803) 546–3623, dallen@belle.baruch.sc.edu, lohrer@belle.baruch.sc.edu

*Virginia*

Dr. Maurice P. Lynch, Manager, Dr. William Reay, Research Coordinator, Chesapeake Bay National Estuarine Research Reserve, VA, Virginia Institute of Marine Science, College of William and Mary, P.O. Box 1347, Gloucester Point, VA 23062, (804) 684–7135, wreay@vims.edu

*Washington*

Mr. Terry Stevens, Manager, Dr. Douglas Bulthuis, Research Coordinator, Padilla Bay National Estuarine Research Reserve, 10441 Bay View-Edison Road, Mt. Vernon, WA 98273–9668, (360) 428–1558, tstevens@padillabay.gov, bulthuis@padillabay.gov

[FR Doc. 01–19400 Filed 8–2–01; 8:45 am]

BILLING CODE 3510–08–P

## COMMISSION OF FINE ARTS

### Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 16 August 2001 at 10:00 a.m., in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001–2728. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas are available to the public one week prior to the meeting. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, 30 July 2001.

**Charles H. Atherton,**

*Secretary.*

[FR Doc. 01–19507 Filed 8–2–01; 8:45 am]

BILLING CODE 6330–01–M

## DEPARTMENT OF DEFENSE

### Waiver of 10 U.S.C. 2534 for Certain Defense Items Produced in the United Kingdom

**AGENCY:** Department of Defense (DoD).

**ACTION:** Notice of waiver of 10 U.S.C. 2534 for certain defense items produced in the United Kingdom.

**SUMMARY:** The Under Secretary of Defense (Acquisition, Technology, and Logistics) is waving the limitation of 10 U.S.C. 2534 for certain defense items produced in the United Kingdom (UK). 10 U.S.C. 2534 limits DoD procurement of certain items to sources in the national technology and industrial base. The waiver will permit procurement of items enumerated from sources in the UK, unless otherwise restricted by statute.

**EFFECTIVE DATE:** This waiver is effective for one year, beginning August 19, 2001.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Mutty, OUSD (AT&L), Director of Defense Procurement, Foreign Contracting, Room 3C762, 3060 Defense

Pentagon, Washington, DC 20301–3060, telephone (703) 697–9553.

**SUPPLEMENTARY INFORMATION:** Subsection (a) of 10 U.S.C. 2534 provides that the Secretary of Defense may procure the items listed in that subsection only if the manufacturer of the item is part of the national technology and industrial base. Subsection (i) of 10 U.S.C. 2534 authorizes the Secretary of Defense to exercise the waiver authority in subsection (d), on the basis of the applicability of paragraph (2) or (3) of that subsection, only if the waiver is made for a particular item listed in subsection (a) and for a particular foreign country. Subsection (d) authorizes a waiver if the Secretary determines that application of the limitation ''would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items'' and if he determines that ''that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.'' The Secretary of Defense has delegated the waiver authority of 10 U.S.C. 2534(d) to the Under Secretary of Defense Acquisition, Technology, and Logistics).

DoD has a reciprocal procurement Memorandum of Understanding (MOU) with the UK that was signed on December 13, 1994.

The Under Secretary of Defense (Acquisition, Technology, and Logistics) finds that the UK does not discriminate against defense items produced in hte United States to a greater degree than the United States discriminates against defense items produced in the UK, and also finds that application of the limitation in 10 U.S.C. 2534 against defense items produced in the UK would impede the reciprocal procurement of defense items under the MOU.

Under the authority of 10 U.S.C. 2534, the Under Secretary of Defense (Acquisition, Technology, and Logistics) has determined that application of the limitation of 10 U.S.C. 2534(a) to the procurement of any defense item produced in the UK that is listed below would impede the reciprocal procurement of defense items under the MOU with the UK.

On the basis of the foregoing, the Under Secretary of Defense (Acquisition, Technology, and Logistics) is waiving the limitation in 10 U.S.C. 2534(a) for procurements of any defense item listed below that is produced in the UK. This waiver applies only to the limitations in 10 U.S.C. 2534(a). It does not apply to any other limitation, including section 8016 and 8064 of the DoD Appropriations Act for Fiscal Year 2001 (Public Law 106–259). This waiver applies to procurements under solicitations issued during the period from August 19, 2001, to August 18, 2002. Similar waivers were granted for the period from August 4, 1998, to August 18, 2001 (63 FR 38815, July 20, 1998, 64 FR 38896, July 20, 1999, and 65 FR 47968, August 4, 2000). For contracts resulting from solicitations issued prior to August 4, 1998, this waiver applies to procurements of the defense items listed below under—

(1) Subcontracts entered into during the period from August 19, 2001, to August 18, 2002, provided the prime contract is modified to provide the Government adequate consideration such as lower cost or improved performance; and

(2) Options that are exercised during the period from August 19, 2001, to August 18, 2002, if the option prices are adjusted for any reason other than the application of the waiver, and if the contract is modified to provide the Government adequate consideration such as lower cost or improved performance.

### List of Items to Which This Waiver Applies

1. Air circuit breakers.
2. Welded shipboard anchor and mooring chain with a diameter of four inches or less.
3. Gyrocompasses.
4. Electronic navigation chart systems.
5. Steering controls.
6. Pumps.
7. Propulsion and machinery control systems.
8. Totally enclosed lifeboats.
9. Ball and roller bearings.

**Michelle P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

[FR Doc. 01–19485 Filed 8–2–01; 8:45 am]

BILLING CODE 5000–04–M

## DEPARTMENT OF EDUCATION

## Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before October 2, 2001.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 30, 2001.

**John Tressler,**

*Leader, Regulatory Information Management, Office of the Chief Information Officer.*

### Office of the Undersecretary

*Type of Review:* New.

*Title:* School and Community Prevention Activities: A National Study of the Safe and Drug-Free Schools Program.

*Frequency:* One time.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions.

*Reporting and Recordkeeping Hour Burden:*

Responses: 4,589.

Burden Hours: 2,397.

*Abstract:* The School and Community Prevention Activities: A National Study of the Safe and Drug-Free Schools Program will assess the quality of prevention activities funded by the Safe and Drug-Free Schools and Communities Act Program and identify changes that will increase program effectiveness. Data collection will include a pilot study, a national mail survey of districts and schools, a national mail survey of Governor's programs and a feasibility study of the relationship of quality and student outcomes. During site visits to a sub-sample of schools, detailed information will be gathered about program quality.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_IMG_Issues@ed.gov* or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address *Jackie.Montague@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–19401 Filed 8–2–01; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP96–312–056]**

### Tennessee Gas Pipeline Company; Notice of Negotiated Rate Filing

July 31, 2001.

Take notice that on July 25, 2001, Tennessee Gas Pipeline Company (Tennessee), tendered for filing a Negotiated Rate Arrangement. Tennessee requests that the Commission approve the Negotiated Rate Arrangement effective July 25, 2001.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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. 01–19537 Filed 8–2–01; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP01–409–000, Docket No. CP01–410–000, Docket No. CP01–411–000]**

### Calypso Pipeline, LLC; Notice of Application

July 30, 2001.

Take notice that on July 20, 2001, Calypso Pipeline, LLC (Calypso), 1400 Smith Street, Houston, Texas 77002, filed and application in the above-referenced docket numbers pursuant to Section 7(c) of the Natural Gas Act, as amended, and Parts 157 and 284 of the Commission's Rules and Regulations, for: (1) a certificate of public convenience and necessity; (i) authorizing Calypso to construct, own, and operate a new natural gas pipeline under Part 157, Subpart A, (ii) approving the pro forma tariff, and (iii) approving the proposed initial rates for service; (2) a blanket certificate authorizing Calypso to construct, operate, and abandon certain facilities (self-implementing routine activities) under Part 157, Subpart F; and (3) a blanket certificate authorizing Calypso to transport natural gas, on an open access and self-implementing basis, under Part 284, Subpart G. The application is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (please call (202) 208–2222 for assistance).

Calypso requests authorization to construct, own, and operate a new pipeline system consisting of approximately a 36 mile, 24-inch offshore segment and approximately a 5.8 mile, 24-inch onshore segment. The offshore pipeline will extend from the boundary of the U.S. Exclusive Economic Zone (EEZ) and the Bahama EEZ, off the southeast Florida coastline (as defined in the 1995 Department of State Public Notice 2237—Exclusive Economic Zone and Maritime Boundaries; Notice of Limits U.S. Atlantic Coast and Gulf of Mexico [1]) to shore at Port Everglades in Fort Lauderdale, Florida. The proposed onshore pipeline segment will be located in Broward County, Florida. The onshore pipeline segment will connect the offshore pipeline with Florida Gas Transmission Company's (''FGT'') existing 24-inch Lauderdale Lateral at Mile Post 1.6 in Broward County, Florida. Calypso's proposed pipeline was designed to transport up to 832,000 MMBtu per day.

Calypso states that it would receive natural gas from a non-jurisdictional offshore pipeline that would be constructed and would consist of approximately 53.9 miles of 24-inch pipe. This non-jurisdictional pipeline would start at an LNG storage terminal and regasification facility that would be built in Freeport, Grand Bahama Island and end at an interconnection with Calypso's proposed offshore segment at the U.S./Bahamian EEZ boundary.

Calypso estimates that the total capital cost of constructing the pipeline and appurtenant facilities will be approximately $132 million. Calypso also filed a pro forma FERC Gas Tariff showing the initial rates for firm transportation service, consisting of a 7.32 cents/MMBtu reservation charge, and a 0.22 cents/MMBtu usage charge; and for interruptible transportation service, a 7.54 cents/MMBtu usage charge. The usage rate for interruptible service is a 100% load factor derivative of the firm service rate. Calypso also requests a limited waiver for the requirement to include a discount recognition provision in its tariff. Calypso states that this requirement is inapplicable to Calypso because Calypso currently has no categories of discountable charges other than the base rates.

[1] 60 FED. REG. ¶ 43,825 (1995).

Calypso indicates that it announced an open season to receive requests and obtain binding commitments for transportation capacity. The open season started on April 27, 2001 and ended on May 29, 2001. As a result, Calypso received three responses. Two of the responses contained contingencies that rendered the bids non-binding on the parties submitting the responses. The third response, by Enron LNG Marketing, LLC (Enron LNG), was for all of the pipeline capacity for twenty years at maximum tariff rates and contained no contingencies. Calypso awarded all the capacity to Enron LNG.

Calypso has identified a total of 24 landowners and governmental agencies that could be affected by the proposed pipeline. Calypso states that no natural forested communities would be affected by construction. Four wetland areas would be temporarily impacted. These impacted areas include approximately 1.7 acres of non-forested wetlands and less than 0.01 acres of sea grass. Calypso claims that there will be no permanent wetland impacts. Calypso also states that there will be no air emissions or noise impacts from pipeline operations because there are no compression facilities.

Any questions regarding the application be directed to Alice K. Weekley, Calypso Pipeline, LLC, 333 Clay Street, Suite 1800, Houston, Texas 77002, at (713) 646–7381, or at *alice.weekley@enron.com*.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before August 20, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–19443 Filed 8–2–01; 8:45 am]

BILLING CODE 6717–01–P

---

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER01–2676–000]**

## Cinergy Services, Inc.; Notice of Filing

July 27, 2001.

Take notice that on July 23, 2001, Cinergy Services, Inc. (Cinergy) tendered for filing a Notice of Name Change from Cleco Utility Group Inc. to Cleco Power LLC. Cinergy respectfully requests waiver of notice to permit the Notice of Name Change to be made effective as of the date of the Notice of Name Change.

A copy of the filing was served upon Cleco Power LLC.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 13, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). 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. 01–19446 Filed 8–2–01; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. GT00–34–005]**

### Dauphin Island Gathering Partners; Notice of Proposed Changes in FERC Gas Tariff

July 31, 2001.

Take notice that on July 20, 2001, Dauphin Island Gathering Partners (DIGP) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed below to become effective July 1, 2001. DIGP states that these tariff sheets reflect changes to shipper names and Maximum Daily Quantities (MDQ's).

Sixth Revised Sheet No. 9
Fifth Revised Sheet No. 10

DIGP states that a copies of this filing are being served on its customers and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. 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. 01–19532 Filed 8–2–01; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–287–056]**

### El Paso Natural Gas Company; Notice of Negotiated Rate and Tariff Filing

July 31, 2001.

Take notice that on July 27, 2001, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheet, to become effective August 1, 2001:

Twenty-Eighth Revised Sheet No. 31

El Paso states that the above tariff sheet is being filed to implement a new negotiated rate contract pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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. 01–19539 Filed 8–2–01; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP01–415–001]**

### El Paso Natural Gas Company; Notice of Compliance Filing

July 31, 2001.

Take notice that on June 28, 2001, El Paso Natural Gas Company (El Paso) tendered for filing its compliance filing pursuant to Commission's Order Accepting and Suspending Tariff Sheets, Subject to Refund and Conditions issued June 8, 2001, at Docket No. RP01–415–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 7, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. 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. 01–19542 Filed 8–2–01; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP01–405–000]**

### Kern River Gas Transmission Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed High Desert Lateral Project and Request for Comments on Environmental Issues

July 31, 2001.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the potential environmental

impacts of the High Desert Lateral Project. This project would involving construction and operation of facilities by Kern River Gas Transmission Company (Kern River) in San Bernardino County, California.[1] Kern River would construct about 31.6 miles of 24-inch-diameter lateral pipeline, as well as an associated tap and three meter stations. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need to Know?'' was attached to the project notice Kern River provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Internet website (*www.ferc.gov*).

**Summary of the Proposed Project**

Kern River wants to construct facilities that would enable it to deliver an initial 141,000 dekatherms per day (Dth/d) of firm capacity service (with a total capacity for 282,000 dth/day) to a gas-fired electricity generating plant currently under construction in Victorville, California. The High Desert Power Project (HDPP), a combined-cycle facility, would provide 720 megawatts of new electric power in Southern California. Kern River seeks authority to construct and operate:

- About 31.6 miles of 24-inch-diameter lateral pipeline (the ''High Desert Lateral'') extending from interconnections with the existing Kern River/Mojave Pipeline Common Facilities and the Pacific Gas and Electric Company (PG&E) systems near Kramer Junction to the new HDPP;
- A 20-inch-diameter mainline tap and receipt meter station (''Kern/Mojave Interconnect''), and a meter station and associated piping and valves (''PG&E Interconnect'') at the northern end of the proposed High Desert Lateral; and
- A delivery meter station where the High Desert Lateral would terminate at the HDPP.

The location of the project facilities is shown in appendix 1.[2]

**Land Requirements for Construction**

Construction of the proposed facilities would affect about 394 acres of land. About 192 acres of permanent easement and 181 acres of temporary construction right-of-way (ROW) would be necessary for pipeline construction. Construction of aboveground facilities would require an additional 1.2 acres (1.0 acres would be permanent ROW). Temporary extra work areas would affect almost 20 acres and would not create any new permanent ROW. About 89 percent of the total lateral length would be contiguous with existing utility and transportation ROWs.

**The EA Process**

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. We call this ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent (NOI), the Commission requests public comments on the scope of the issues we will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposal and encourage them to submit comments on their areas of concern.

We note that Kern River's proposed project has already undergone extensive regulatory review, including the issuance of a Biological Opinion from the U.S. Fish and Wildlife Service (FWS); an Incidental Take Permit from the California Department of Fish and Game; a Record of Decision and ROW Grant from the U.S. Bureau of Land Management (BLM); and a Final Environmental Impact Statement prepared by the FWS, BLM, and U.S. Army Corps of Engineers. Kern River has identified three minor route deviations (totaling about 1.1 miles) and a pipe storage yard that were outside of the previously surveyed corridor. Our EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources
- Vegetation and wildlife
- Cultural resources
- Public safety
- Land use
- Endangered and threatened species

Our EA will include consideration of the No-Action Alternative and possible alternatives to the proposed project or portions of the project, where resource conflicts warrant such analysis. To the extent appropriate, our EA will also contain recommendations on how to lessen or avoid impact on the various resource areas. However, we expect to rely heavily on the existing analyses referenced above. As such, issues and alternatives evaluated previously will not be revisited.

Our independent analysis of the issues will be presented in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

**Public Participation**

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes) and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow these instructions carefully to ensure that your comments are received in time and properly recorded:

[1] Kern River's application was filed with the Commission under Section 7(c) of the Natural Gas Act and Subpart A of Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail. This filing may also be viewed on the web at *www.ferc.gov* using the ''RIMS'' link. For instructions on connecting to RIMS refer to the last page of this notice.

[1] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

• Send an original and two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission 888 First St. NE, Room 1A, Washington, DC 20426.

• Label one copy of the comments for the attention of Gas Group 1.

• Reference Docket No. CP01–405–000.

• Mail your comments so that they will be received in Washington, DC on or before September 7, 2001.

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.

**Becoming an Intervenor**

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

You do not need intervenor status to have your environmental comments considered. Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (*www.ferc.gov*) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–19531 Filed 8–2–01; 8:45 am]

BILLING CODE 6717–01–P

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP99–176–037]**

### Natural Gas Pipeline Company of America; Notice of Negotiated Rate and Tariff Filing

July 31, 2001.

Take notice that on July 25, 2001, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Third Revised Sheet No. 26J, to be effective July 1, 2001.

Natural states that the purpose of this filing is to cancel a negotiated rate Tariff sheet. Also, Natural tenders for filing copies of the letter agreement that terminated the related negotiated rate agreement.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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. 01–19540 Filed 8–2–01; 8:45 am]

BILLING CODE 6717–01–P

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER01–2099–000]**

### Neptune Regional Transmission System, LLC; Notice of Issuance of Order

July 30, 2001.

Neptune Regional Transmission System, LLC (Neptune) filed with the Commission, in the above-docketed proceeding, a proposed tariff which provides for the transmission of electricity at rates established through negotiations and open seasons at market-based rates. Neptune's filing also requested certain waivers and authorizations. In particular, Neptune requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Neptune. On July 27, 2001, the Commission issued an Order Approving Proposal Subject To Conditions (Order), in the above-docketed proceeding.

The Commission's July 27, 2001 Order granted Neptune's request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (C), (D), and (E):

(C) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Neptune 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.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, Neptune is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Neptune, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(E) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Neptune's issuances of securities or assumptions of liabilities* * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 27, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the 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. 01–19445 Filed 8–2–01; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**Project No. 2585–000**

### Northbrooke Carolina Hydro, L.L.C., Notice of Meeting

July 30, 2001.

The Commission will hold a meeting with the licensee and the North Carolina State Historic Preservation Officer for the Idols Hydroelectric Project, FERC No. 2585.

a. *Date and Time of Meeting:* August 14, 2001, 9:30 a.m.

b. *Place:* Clemmons, North Carolina.

c. *FERC Contact:* For directions contact James T. Griffin, (202) 219–2799; *james.griffin@ferc.fed.us* or Chuck Ahlrichs, Northbrook Carolina Hydro, (425) 557–3680.

d. *Purpose of the Meeting:* To discuss, with the licensee and the North Carolina State Historic Preservation Officer, compliance with Section 106 of the National Historic Preservation Act in the matter of the surrender of license of the Idols Hydroelectric Project, FERC No. 2585, a property eligible for inclusion in the National Register of Historic Places.

e. *Proposed agenda:* (1) Introductions, (2) Section 106 requirements, (3) The Idols Hydroelectric Project Historic District and its contributing elements, (4) Effects of License Surrender, (5) Preservation of the Historic District, (6) What shall we then do?

f. All local, state, and Federal agencies, Indian Tribes, and interested parties, are hereby invited to attend this meeting as participants.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–19447 Filed 8–2–01; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP99–322–005]**

### Northern Border Pipeline Company; Notice of Filing of Refund Report

July 30, 2001.

Take notice that on May 10, 2001, Northern Border Pipeline Company (Northern Border) tendered for filing a billing adjustment and refund report.

Northern Border states that this filing is being made in compliance with a letter order issued December 13, 2000, in Docket No. RP99–322–000, *et al.* The December 13, 2000 order requires Northern Border to make refunds for the period December 1, 2000 through January 31, 2001.

Northern Border states that a copy of its filing was served on all parties included on the official service list maintained by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 3, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. 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. 01–19449 Filed 8–2–01; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP01–374–000]**

### Northern Natural Gas Company, Great Lakes Gas Transmission Limited Partnership; Notice of Joint Application

July 31, 2001.

Take notice that on May 24, 2001, Northern Natural Gas Company (Northern), and Great Lakes Gas Transmission Limited Partnership (Great Lakes), filed a joint application pursuant to Section 7(b) of the Natural Gas Act (NGA), as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), requesting permission and approval to abandon service under an individually certificated exchange agreement, all as more fully set forth in the joint application which is on file with the Commission, and open to public inspection.

Specifically, Northern and Great Lakes propose to abandon Rate Schedules X–26 and X–2 contained in there respective FERC Gas Tariffs, Original Volumes No. 2. The parties mutually agree to the termination of the service under these Rate Schedules.

Any questions regarding this application should be directed to Keith L. Petersen, Director, Certificates and Reporting for Northern, 1111 South 103 Street, Omaha, Nebraska 68124, or Gene Fava, Manager, Transportation Administration for Great Lakes, 5250 Corporate Drive, Troy, Michigan 48098.

Any person desiring to be herd or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.214 and Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed by August 21, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection. This filing may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions ((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. 01–19530 Filed 8–2–01; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP95–409–011]**

### Northwest Pipeline Corporation; Notice of Compliance Filing

July 31, 2001.

Take notice that on July 26, 2001, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, the tariff sheets listed in Appendix A to the filing.

Northwest states that a number of tariff sheets which apply to the period from February 1, 1996 through February 28, 1997 during which Northwest's rates as established in Docket No. RP95–409 are applicable.

Northwest states that the purpose of this filing is to comply with the Commission's June 1, 1999, September 29, 2000 and July 11, 2001 Orders in Docket No. RP95–409–000. Northwest states that its compliance filing is consistent with the Commission's Orders and directives that have been issued with respect to the Docket No. RP95–409–000 proceeding.

Northwest states that a copy of this filing has been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. 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. 01–19536 Filed 8–2–01; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EC01–96–000]**

### NRG Energy, Inc. et al.; Notice of Filing

July 30, 2001.

Take notice that on July 25, 2001, NRG Energy, Inc., Indeck Energy Services, Inc, Indeck Energy Services of Ilion, Inc., and Indeck Ilion Cogeneration Corporation (together Applicants), pursuant to Section 203 of the Federal Power Act, filed with the Federal Energy Regulatory Commission a supplement to their May 7, 2001 joint application for the disposition of jurisdictional facilities. This supplemental filing revised the original market concentration analysis to reflect the fact that generating capacity associated with the 300 MW Rockford I Plant is subject to a tolling agreement with Commonwealth Edison and therefore should be attributed to Commonwealth Edison. In addition, the supplement filing, provides an analysis of market power concentration associated with the Commonwealth Edison destination market in 2004.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 9, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-filing'' link.

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

*Acting Secretary.*

[FR Doc. 01–19442 Filed 8–2–01; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER01–1417–000 and ER01–1417–001]**

### Richmond County Power, LLC; Notice of Issuance of Order

July 30, 2001.

Richmond County Power, LLC (Richmond County) filed with the Commission, in the above-docketed proceeding, an application under section 205 of the Federal Power Act seeking to sell energy, capacity, and ancillary services at market-based rates. Richmond County's filing also requested certain waivers and authorizations. In particular, Richmond County requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Richmond County. On July 27, 2001, the Commission issued an Order Conditionally Accepting For Filing Market-Based Rate Tariff (Order).

The Commission's July 27, 2001 Order granted Richmond County's request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Richmond County should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, Richmond County

is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Richmond County, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Richmond County's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 27, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, DC 20426. The Order may also be viewed on the 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. 01–19444 Filed 8–2–01; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP01–488–000]**

### Steuben Gas Storage Company, Notice of Tariff Filing

July 30, 2001.

Take notice that on July 18, 2001, Steuben Gas Storage Company (Steuben), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Third Revised Sheet No. 1 and Original Sheet No. 156B, with an effective date of August 20, 2001.

Steuben states that the revised tariff sheets are being filed to modify Steuben's tariff to provide for a general waiver of the ''shipper must have title rule'' in the event that Steuben is transporting gas or storing gas for others on acquired off-system capacity and to include a general statement that Steuben will only transport or store gas for others using off-system capacity pursuant to its existing Tariff and rates.

Steuben states that copies of the filing has been mailed to each of Steuben's customers and affected state regulatory commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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. 01–19450 Filed 8–2–01; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP01–488–000]**

### Steuben Gas Storage Company; Notice of Tariff Filing

July 31, 2001.

Take notice that on July 18, 2001, Steuben Gas Storage Company (Steuben), 1001 tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Third Revised Sheet No. 1 and Original Sheet no. 156B. Steuben requests that this revised tariff sheet and this original tariff sheet be made effective August 20, 2001.

Steuben states that the revised tariff sheets are being filed to modify Steuben's tariff to provide for a general waiver of the ''shipper must have title rule'' in the event that Steuben is transporting gas or storing gas for others on acquired off-system capacity and to include a general statement that Steuben will only transport or store gas for others using off-system capacity pursuant to its existing Tariff and rates.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 first Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this 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 available for public inspection. This filing may be viewed on the Commission's web site at *http://www.ferc.fed.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions ((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. 01–19545 Filed 8–2–01; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of Electrolux Home Products from the DOE Refrigerator and Refrigerator-Freezer Test Procedure (Case No. RF–005)

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice.

**SUMMARY:** Today's notice grants an Interim Waiver to Electrolux Home Products (Electrolux) from the existing Department of Energy (DOE or Department) refrigerator test procedure regarding long-time automatic defrost for the company's variable defrost control products.

Today's notice also publishes a ''Petition for Waiver'' from Electrolux. Electrolux's Petition for Waiver requests DOE to modify the DOE refrigerator test procedure relating to the long-time automatic defrost calculation. Electrolux seeks to change the time used for the beginning of the defrost period in the long-time automatic defrost calculation for refrigerators having a variable defrost control function.

The Department is soliciting comments, data, and information respecting the Petition for Waiver.

**DATES:** DOE will accept comments, data, and information not later than September 4, 2001.

**ADDRESSES:** Written comments and statements shall be sent to: Department of Energy, Office of Building Research and Standards, Case No. RF–005, Mail Stop EE–41, Room 1J–018, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael G. Raymond, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–41, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–9611, or Mr. Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0103, (202) 586–9507.

**SUPPLEMENTARY INFORMATION:** The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act, as amended, (EPCA) which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including refrigerators and refrigerator freezers.

The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, Subpart B.

The Department amended the test procedure rules to provide for a waiver process by adding Section 430.27 to 10 CFR part 430. 45 FR 64108, September 26, 1980. Subsequently, DOE amended the waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 10 CFR part 430, Section 430.27(a)(2).

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

An Interim Waiver will be granted if it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. 10 CFR part 430, Section 430.27 (g). An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On November 21, 2000, Electrolux filed an Application for Interim Waiver and a Petition for Waiver regarding variable defrost control timing. Electrolux's Application seeks an Interim Waiver for the variable defrost control calculation in section 4.1.2.1: ''* * * The second part would start when the defrost period is initiated during a compressor 'on' cycle and terminate at the second turn 'on' of the compressor motor or after four hours, whichever comes first.''

This Interim Waiver asks that the above portion of the test procedure section 4.1.2.1 be redefined as follows: ''The second part would start when a defrost is initiated when the compressor 'on' cycle is terminated prior to start of the defrost heater and terminate at the second turn 'on' of the compressor or after four hours, whichever comes first.''

This change in the test procedure allows for the existence of a control that is capable of timing defrost to occur other than during a compressor ''on'' cycle, thereby taking advantage of the natural warming of the evaporator during an off cycle, and saving additional energy. Technology has advanced sufficiently that it is feasible to design and build a system that no longer has to initiate defrost during a compressor run period, as did the old mechanical defrost timers. Electrolux is asking to have the time before the heaters turn on be included in the defrost period. The evaporator is warming up during this time, with no use of electrical energy.

The current test procedures do not properly account for the energy savings produced by Electrolux's timing of the defrost heater activation, and therefore ''may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics, as to provide materially inaccurate comparative data.'' Thus, it appears likely that this Petition for Waiver will be granted.

Therefore, based on the above, DOE is granting Electrolux an Interim Waiver for its variable defrost control refrigerator-freezer products. Electrolux shall be permitted to test its variable defrost control refrigerator-freezer products on the basis of the test procedures specified in 10 CFR part 430, Subpart B, Appendix A1, with the modification set forth below:

Section 4.1.2.1 currently reads:

''4.1.2.1 Long-time Automatic Defrost. If the model being tested has a long-time automatic defrost system, the test time period may consist of two parts. A first part would be the same as the test for a unit having no defrost provisions (section 4.1.1). The second part would start when a defrost period is initiated during a compressor 'on' cycle and terminate at the second turn 'on' of the compressor motor or after four hours, whichever comes first.''

Section 4.1.2.1 will be modified to read:

''4.1.2.1 Long-time Automatic Defrost. If the model being tested has a long-time automatic defrost system, the test time period may consist of two parts. A first part would be the same as the test for a unit having no defrost provisions (section 4.1.1). The second part would start when a defrost is initiated when the compressor 'on' cycle is terminated prior to start of the defrost heater and terminate at the second turn ''on'' of the compressor or after four hours, whichever comes first.''

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the Application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Electrolux's Petition for Waiver requests DOE to modify the DOE

refrigerator test procedure relating to the blower time delay specification. Electrolux seeks to test its variable defrost control products using the modified calculation of Section 4.1.2.1 quoted above. Pursuant to paragraph (b) of 10 CFR part 430.27, DOE is hereby publishing the ''Petition for Waiver'' in its entirety. The Petition contains no confidential information. The Department solicits comments, data, and information respecting the Petition.

Issued in Washington, DC, on July 30, 2001.

**David K. Garman,**

*Assistant Secretary for Energy Efficiency and Renewable Energy.*

**Electrolux**

November 21, 2000.

Mr. Dan W. Reicher, Assistant Secretary for Energy Efficiency and Renewable Energy, United States Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585

Petition for Waiver for Test Procedure in Appendix Al to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Electric Refrigerators and Electric Refrigerator-Freezers.

On behalf of Electrolux Home Products Co., a Division of White Consolidated Industries Inc., I wish to submit a petition for waiver under 10 CRF 430.27 for the existing test procedures for Para. 4.1.2.1: Long-time Automatic Defrost. This petition for waiver involves refrigerator-freezer products having the variable defrost control function.

Para. 4.1.2.2 Variable defrost control: Currently indicates, ''If the model being tested has a variable defrost control system, the test shall consist of three parts. Two parts shall be the same as the test for long-time automatic defrost (section 4.1.2.1 ).''

Para. 4.1.2.1 Long-time Automatic Defrost currently says: ''If the model being tested has a long-time automatic defrost system, the test time period may consist of two parts. A first part would be the same as the test for a unit having no defrost provisions (section 4.1.1). The second part would start when a defrost period is initiated during a compressor ''on'' cycle and terminate at the second turn ''on'' of the compressor motor or after four hours, whichever comes first.''

The current understanding of Para. 4.1.2.1 is that the ''start'' of a defrost period is the activation of the defrost heater.

Para. 4.1.2.1, when written, did not conceive of the practicality of a control system that would be capable of utilizing the natural ''warming'' of an evaporator during the compressor ''off'' cycle as a means of reducing the energy input required for a defrost period. Hence it was written: ''The second part would start when a defrost period is initiated during a compressor ''on'' cycle, etc''.

The ability to time a defrost period after a normal compressor ''off'' period offers an improvement in energy efficiency in that the defrost heater is not required to heat the evaporator from its coldest running position to its warmest defrost position which sheds ice from the evaporator.

Our petition requests that Para. 4.1.2.1 be changed to allow the initiation of the defrost period to begin at the end of compressor ''run'' cycle rather than the initiation of the defrost heater.

The following wording is proposed for Para. ''4.1.2.1. Long-time Automatic Defrost: If the model being tested has a long-time automatic defrost system, the test time period may consist of two parts. A first part would be the same as the test for a unit having no defrost provisions (section 4.1.1 ). The second part would start when a defrost period is initiated when the compressor ''on'' cycle is terminated prior to start of the defrost heater and terminate at the second turn ''on'' of the compressor or after four hours, whichever comes first.''

This change is clearly within the intent of the test procedure in attempting to recognize all possible ways to improve overall energy efficiency.

We believe that all major domestic manufacturers have utilized, are presently utilizing, or are investigating variable defrost control technology.

The optional variable defrost control test method described in 4.1.2.3 remains a valid procedure. However, it continues to have no change in its deficiencies, requiring excessive amounts of time to reach stabilized door opening conditions, and yet additional time to establish statistical mean time between defrost data. It is expected that the technique described in 4.1.2.1 and 4.1.2.2 will continue to be favored.

Respectfully submitted,

Robert L. Cushman,

*Manager Product Development, Electrolux Home Products.*

[FR Doc. 01–19437 Filed 8–2–01; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–255–030]**

## TransColorado Gas Transmission Company; Notice of Compliance Filing

July 31, 2001.

Take notice that on July 26, 2001, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Thirtieth Revised Sheet No. 21, to be effective July 26, 2001.

TransColorado states that the tariff sheets are being filed in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000.

TransColorado states that the tendered tariff sheet propose to revise TransColorado's Tariff to reflect an amended negotiated-rate contract.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. 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. 01–19538 Filed 8–2–01; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP01–245–002]**

### Transcontinental Gas Pipe Line Corporation; Notice of Refund Report

July 31, 2001.

Take notice that on July 16, 2001 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing with the Commission a refund report showing that on June 22, 2001, Transco submitted refunds/surcharges to the affected SunBelt expansion shippers in Docket No. RP01–245–001. Transco states that the total refund/surcharge amount, including interest, was $277.82.

Transco states that copies of the filing are being mailed to the affected SunBelt expansion shippers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 7, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. 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. 01–19541 Filed 8–2–01; 8:45 am]

BILLING CODE 6717–01–P

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP01–446–001]**

### Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

July 31, 2001.

Take notice that on July 20, 2001, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing its response to the Commission's Order issued July 3, 2001 in Docket No. RP01–446–000.

On July 3, 2001, the Commission issued its Order in the above referenced docket. That Order accepted Williston Basin's proposed tariff sheets to be effective July 4, 2001, subject to Williston Basin making a compliance filing to address the conditions of the Order. The instant filing is being made in compliance with the provisions of that Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. 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. 01–19544 Filed 8–2–01; 8:45 am]

BILLING CODE 6717–01–P

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP01–415–002]**

### El Paso Natural Gas Company; Notice of Compliance Filing

July 31, 2001.

Take notice that on July 26, 2001, El Paso Natural Gas Company tendered for filing a revised Exhibit B to El Paso Electric Company's transportation service agreement.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. 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. 01–19543 Filed 8–2–01; 8:45 am]

BILLING CODE 6717–01–P

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EG01–267–000, et al.]**

### Ameren Energy Generating Company, et al.; Electric Rate and Corporate Regulation Filings

July 30, 2001.

Take notice that the following filings have been made with the Commission:

**1. Ameren Energy Generating Company**

[Docket No. EG01–267–000]

Take notice that on July 24, 2001, Ameren Energy Generating Company (AEG), One Ameren Plaza, 1901 Chouteau Plaza, P.O. Box 66149, St. Louis, Missouri, 63166–6149, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of continuing exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

AEG states that it acquired the following units, which began commercial operations within the last 60 days, as further detailed in the application: Kinmundy, Illinois Unit No. 2; Pinckneyville, Illinois Unit Nos. 5, 6, and 7; and Columbia, Missouri Unit Nos. 2, 3, and 4. In addition, AEG has also repowered one coal-fired steam-electric generating unit at its Grand Tower, Illinois facility with a gas-fired combustion turbine, the commercial operation date of which was June 29, 2001. AEG states that all of the electric energy from these facilities will be sold at wholesale.

Comment date: August 20, 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. Wygen Funding, Limited Partnership**

[Docket No. EG01–268–000]

Take notice that on July 23, 2001 Wygen Funding, Limited Partnership (Wygen Funding) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. The eligible facilities consist of an 80 MW (summer rating) coal plant located in Campbell County, Wyoming near Gillette, Wyoming and a step-up transformer. The address of Wygen Funding's principal business office is c/o ML Leasing Equipment Group, 95 Greene Street, 7th Floor, Jersey City, New Jersey 07302.

*Comment date:* August 20, 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.

**3. Chehalis Power Generating, L.P.**

[Docket No. EG01–269–000]

Take notice that on July 23, 2001, Chehalis Power Generating, L.P. (Applicant), having its principal place of business at 1177 West Loop South, Suite 900, Houston, Texas 77027, tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant will own and operate a generating facility in Lewis County, Washington, consisting of two natural gas-fired combined-cycle combustion turbine generator units and a steam turbine generator, having a nominal output of 520 MW.

*Comment date:* August 20, 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.

**4. Canastota Windpower, LLC**

[Docket No. EG01–270–000]

Take notice that on July 26, 2001, Canastota Windpower LLC (Canastota) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Canastota is developing a wind-powered eligible facility with a capacity of 30 megawatts, powered by twenty (20) wind turbine generators, which will be located in Madison County, New York.

*Comment date:* August 20, 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.

**5. Doswell Limited Partnership**

[Docket No. ER01–2669–000]

On July 25, 2001, Doswell Limited Partnership (Doswell) filed with the Commission an executed Service Agreement (the Service Agreement) between Doswell and Virginia Electric and Power Company, dated June 28, 2001.

*Comment date:* August 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

**6. American Electric Power Service Corporation**

[Docket No. EC01–130–000]

Take notice that on July 24, 2001, American Electric Power Service Corporation (AEPSC), acting on behalf of certain electric utility subsidiaries of American Electric Power Company, Inc., (AEP) submitted an application for approval for the transfer of certain jurisdictional facilities among AEP subsidiaries, pursuant to Section 203 of the Federal Power Act (Act), 16 U.S.C. 824b (1994), and Part 33 of the Regulations of the Federal Energy Regulatory Commission (Commission), as revised pursuant to Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000). Such transfers are proposed to be made to comply with electric utility restructuring laws of Ohio and Texas and to foster the development of competitive electric markets consistent with such state laws. AEPSC states that a copy of the filing has been served on the public service commissions of Ohio, Texas, Arkansas, Indiana, Kentucky, Louisiana, Michigan, Tennessee, Virginia, West Virginia and Oklahoma.

*Comment date:* August 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

**7. Southern Company Services, Inc.**

[Docket No. ER01–2670–000]

Take notice that on July 25, 2001, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company (APC), tendered for filing an Interconnection Agreement (IA) by and between APC and Southern Power Company (Southern Power) for Autaugaville CC Unit 2. The IA allows Southern Power to interconnect its Autaugaville CC Unit 2 generating facility to be located in Autuauga County, Alabama, to APC's electric system.

A copy of this filing has been sent to Southern Power.

*Comment date:* August 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

**8. Southern Company Services, Inc.**

[Docket No. ER01–2671–000]

Take notice that on July 25, 2001, Southern Company Services, Inc. (SCA), acting on behalf of Alabama Power Company (APC), tendered for filing an Interconnection Agreement (IA) by and between APC and Souther Power Company (Souther Power) for Autuaugaville CC Unite 1, The IA allows Souther Power to interconnect its Autaugaville CC Unite 1 generating facility to be located in Autauga County, Alabama to PAC's electric system.

An effective date of June 25, 2001 has been requested.

*Comment date:* August 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

**9. Idaho Power Company**

[Docket No. ER01–2672–000]

Take notice that on July 25, 2001, Idaho Power Company filed Generator Interconnection and Operating Agreement between Idaho Power Company and Emmett Power Company, under its open access transmission tariff in the above-captioned proceeding.

*Comment date:* August 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

**10. Indianapolis Power & Light Company**

[Docket No. ER01–2673–000]

Take notice that on July 25, 2001, Indianapolis Power & Light Company filed a Service Agreement for Firm Point-to-Point Transmission Service between Indianapolis Power & Light Company and Axia Energy, LP, under its open access transmission tariff in the above-captioned proceeding.

*Comment date:* August 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

**11. Indianapolis Power & Light Company**

[Docket No. ER01–2674–000]

Take notice that on July 25, 2001, Indianapolis Power & Light Company filed a Service Agreement for Non-Firm

Point-to-Point Transmission Service between Indianapolis Power & Light Company and Axia Energy, LP, under its open access transmission tariff in the above-captioned proceeding.

*Comment date:* August 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

**12. Sierra Pacific Power Company/ Nevada Power Company**

[Docket No. ER01–2677–000]

Take notice that on July 25, 2001, Sierra Pacific Power Company and Nevada Power Company (jointly Operating Companies) tendered for filing Service Agreements (Service Agreements) with the following entities for Non-Firm and/or Short-Term Firm Point-to-Point Transmission Service under Sierra Pacific Resources Operating Companies FERC Electric Tariff, First Revised Volume No. 1, Open Access Transmission Tariff (Tariff). PPL EnergyPlus, LLC (Short-Term and Non-Firm) and Pinnacle West Capital Corporation, Pinnacle West Marketing & Trading (Short-Term and Non-Firm.

The Operating Companies are filing the executed Service Agreements with the Commission in compliance with Sections 13.4 and 14.4 of the Tariff and applicable Commission regulations. The Operating Companies also submitted revised Sheet Nos. 195A and 196 (Attachment E) to the Tariff, which is an updated list of current subscribers. The Operating Companies request waiver of the Commission's notice requirements to permit an effective date of July 26, 2001 for Attachment E, and to allow the Service Agreements to become effective according to their terms.

Copies of this filing were served upon the Public Utilities Commission of Nevada, the Public Utilities Commission of California and all interested parties.

*Comment date:* August 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

**13. Louisville Gas And Electric Company/Kentucky Utilities Company**

[Docket No. ER01–2678–000]

Take notice that on July 25, 2001, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an executed unilateral Service Sales Agreement between Companies and Conoco Gas and Power Marketing under the Companies' Rate Schedule MBSS.

*Comment date:* August 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

**14. Indianapolis Power & Light Company**

[Docket No. ER01–2675–000]

Take notice that on July 25, 2001, Indianapolis Power & Light Company filed a Service Agreement for Firm Point-to-Point Transmission Service between Indianapolis Power & Light Company and Dayton Power & Light Company, under its open access transmission tariff in the above-captioned proceeding.

*Comment date:* August 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

**15. Louisville Gas And Electric Company/Kentucky Utilities Company**

[Docket No. ER01–2679–000]

Take notice that on July 25, 2001, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing executed transmission service agreement with Hoosier Energy REC, Inc. The agreement allows Hoosier Energy REC, Inc. to take network integration transmission service from LG&E/KU.

*Comment date:* August 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

**16. Idaho Power Company**

[Docket No. ER01–2680–000]

Take notice that on July 25, 2001, Idaho Power Company filed a Service Agreement for Firm Point-to-Point Transmission Service between Idaho Power Delivery and Idaho Power Marketing, under its open access transmission tariff in the above-captioned proceeding.

*Comment date:* August 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

**17. Elwood Energy III, LLC**

[Docket No. ER01–2681–000]

Take notice that on July 25, 2001, Elwood Energy III, LLC tendered for filing a service agreement for sales of energy and capacity to Aquila Energy Marketing Corporation and UtiliCorp United Inc.

*Comment date:* August 15, 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. 01–19441 Filed 8–2–01; 8:45 am]

BILLING CODE 6717–01–P

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 30, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12067–000.

c. *Date filed:* July 5, 2001.

d. *Applicant:* BAE Energy.

e. *Name of Project:* Leishman Drop.

f. *Location:* On the Saint Mary Canal System in Glacier County, Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Ted Sorenson, Sorenson Engineering, 5203 South 11th East, Idaho Falls, ID 83404, (208) 522–8069.

i. *FERC Contact:* Elizabeth Jones (202) 208–0246.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Please include the Project Number (12067–000) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the Saint Mary Canal System owned by the Bureau of Reclamation and would not alter the current release or flow patterns through the system. The project would consist of: (1) A proposed new canal approximately 1.5 miles in length that would replace the existing drop structure in the Saint Mary Canal, (2) a proposed 9.5 foot diameter penstock approximately 1/4 mile in length, (3) two generating units with a total installed capacity of 1.4 MW, (5) approximately three miles of new 12.5 kV transmission lines to connect to the existing grid, and (6) appurtenant facilities.

The project would have an estimated annual generation of 21 GWH.

l. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions ((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.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–19448 Filed 8–2–01; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 31, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Temporary Amendment to License.

b. *Project No.:* 2833–082.

c. *Date Filed:* July 23, 2001.

d. *Applicant:* Lewis County Public Utility District.

e. *Name of Project:* Cowlitz Falls.

f. *Location:* The Cowlitz Falls hydroelectric project is located on the Cowlitz River in Lewis County, Washington, immediately upstream of the City of Tacoma's licensed Cowlitz River Project No. 2016. No federal lands would be affected.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Steven Grega, Lewis County Public Utility District, 321 N.W. Pacific Avenue, P.O. Box 330, Chehalis, WA 98532–0330; (360) 740–2453.

i. *FERC Contact:* Questions about this notice can be answered by Kenneth Hogan at (202) 208–0434 or e-mail address: *Kenneth.Hogan@ferc.fed.us.*

The Commission cannot accept comments, recommendations, motions to intervene or protests sent by e-mail; these documents must be filed as described below.

j. Deadline for filing comments, terms and conditions, motions to intervene, and protests: 15 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, recommendations, terms and conditions, protests and interventions may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at: http://www.ferc.gov.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The Lewis County Public Utility District (District) filed an application to temporarily modify the instream flow requirement of the Cowlitz Falls Project No. 2833, set forth in Article 46 for a period of two years. The District proposes to reduce instream flow to 250 cubic feet per second (cfs), (fish facility outflow + turbine and dam leakage + Tumwater Creek), when natural inflow to the Cowlitz Falls reservoir is below the turbine minimum flow requirements of 1,700-cfs. The District states that such a reduction will improve fish collection efficiency at the Cowlitz Falls Project and optimize generation. Article 46 reads as follows:

Article 46: The licensee shall operate the Cowlitz Falls Project in a run-of-river mode. Daily variations in the water surface elevation of the reservoir shall not exceed two feet under normal operating conditions. During periods when Project No. 2016's Riffe Reservoir, located immediately downstream, is drawndown below elevation 750 feet mean sea level, the flow below the Cowlitz Falls Dam shall be maintained at a minimum of 1,000 cfs or inflow to the Cowlitz Falls Project reservoir, whichever is less. Run-of-river operation may be temporarily modified if required by operating emergencies beyond the control of the licensee, and for short periods upon mutual agreement between the licensee and the Washington State Department of Fisheries and Department of Game.

The District, with the cooperation of the Washington Department of Fish and Wildlife (WDFW), the National Marine Fisheries Service (NMFS), and the U.S. Fish and Wildlife Service (FWS), on April 25, 2001, conducted a reduced instream flow test to evaluate the effects on the fishery and other resources in the downstream reach below the Cowlitz Falls Project. The District's amendment request is based on that study. The District request that this amendment be in effect for a two year period, to further evaluate the effects of the modified operations. Upon evaluation of those effects, the District may apply for a license amendment permanently modifying license Article 46. The District expects to receive the approval of the WDFW with the concurrence of the NMFS and the FWS on the amendment.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.gov. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Any filings must bear in all capital letters the title ''COMMENTS,'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–19533 Filed 8–2–01; 8:45 am]

**BILLING CODE 6717–01–P**

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

July 31, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 3701–037.

c. *Date Filed:* July 18, 2001.

d. *Applicants:* Yakima-Tieton Irrigation District (Transferor) and American Energy, L.L.C. (Transferee).

e. *Name of Project:* Tieton Dam.

f. *Location:* The proposed project is located at the U.S. Bureau of Reclamation's Tieton Dam and Reservoir on the Tieton River in Yakima County, Washington. The Bureau's dam and reservoir and a portion of the project's proposed transmission line occupy U.S. Forest Service lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Donald H. Clarke, Law Offices of GKRSE, 1500 K Street, NW., Suite 330, Washington, DC 20005, (202)408–5400; Ted S. Sorenson, American Energy, L.L.C., 5203 South 11th East, Idaho Falls, ID 83404, (208) 522–8609.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Deadline for filing comments or motions:* September 7, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Please include the Project Number (3701–037) on any comments or motions filed.

k. *Description of Transfer:* The Yakima-Tieton Irrigation District (YTID) has determined that it does not wish to complete the development of the project itself and has solicited bid proposals from qualified hydroelectric project developers. American Energy, L.L.C. submitted a proposal that was determined by YTID to be the best bid and was accepted by YTID. In accordance with the transfer agreement between American Energy, L.L.C. and YTID, American Energy, L.L.C. will acquire the project license, subject to Commission approval, and continue with the development of the project, for which construction was commenced on May 18, 2001 by fabrication of the project generating equipment.

l. *Location of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions ((202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–19534 Filed 8–2–01; 8:45 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6620–5]**

## Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7167 or www.epa.gov/oeca/ofa.

Weekly receipt of Environmental Impact Statements

Filed July 23, 2001 Through July 27, 2001

Pursuant to 40 CFR 1506.9.

*EIS No. 010272,* Draft EIS, AFS, WA, Stimson Access Project, To Access their Private Property through National Forest System Lands, Idaho Panhandle National Forests, Priest Lake Ranger District, Pend Oreille County, WA, Comment Period Ends: September 17, 2001, Contact: Debbie Butler (208) 443–2512.

*EIS No. 010273,* Draft EIS, NPS, DC, Mary McLeod Bethune Council House National Historic Site, Implementation, General Management Plan, Washington, DC, Comment Period Ends: October 5, 2001, Contact: Diann Jacox (202) 673–2402. This document is available on the Internet at http://www.MAMC—GMP@nps.gov.

*EIS No. 010274,* Final EIS, AFS, ID, Starbucky Restoration Project, Implementation of Vegetative Treatment, Road Construction and Watershed Improvements, Nez Perce National Forest, Red River Ranger District, Idaho County, ID, Wait Period Ends: September 4, 2001, Contact: Kevin Martin (208) 842–2245.

*EIS No. 010275,* Final EIS, BOP, LA, Pollock Federal Correctional Institution, Construction and Operation, near Town of Pollock, Grant Parish, LA, Wait Period Ends: September 4, 2001, Contact: David J. Dorworth (202) 514–6470.

*EIS No. 010276,* Draft EIS, AFS, MT, West Lake Timber Sale and Road Decommissioning Project, Implementation, Gallatin National Forest, Hebgen Lake Ranger District, Gallatin County, MT, Comment Period Ends: October 2, 2001, Contact: Susan Lamont (406) 832–6976. This document is available on the Internet at www.fs.fed.us/rl/gallatin/projects/wlake.shtml.

*EIS No. 010277,* Draft EIS, AFS, UT, Griffin Springs Resource Management Project, Implementation, Commercial Timber Harvesting, Aspen Regeneration, Management Ignited Prescribed Fire, and Road Work, Dixie National Forest, Escalante Ranger District, Garfield County, UT, Comment Period Ends: September 17, 2001, Contact: Mary Wagner (435) 865–3701.

*EIS No. 010278,* Draft EIS, AFS, CA, Mineral Forest Recovery Project, Proposes to Construct Defensible Fuel Profile Zones (DFPZs), Lassen National Forest, Almanor Ranger District, Tehama County, CA, Comment Period Ends: September 17, 2001, Contact: Mary Lou Mini (530) 258–2141.

*EIS No. 010279,* Draft EIS, AFS, ID, Little Blacktail Ecosystem Restoration Project, To Improve the Health and Productivity of Terrestrial and Aquatic Habitats, Idaho Panhandle National Forests, Sandpoint Ranger District, Bonner County, ID, Comment Period Ends: September 17, 2001, Contact: Nancy Kertis (208) 265–6616. This document is available on the Internet at http://www.fs.fed.us/ipnf/eco/manage/nepa/index.html.

*EIS No. 010280,* Draft Supplement, FHW, IA, IA–100 Extension Around Cedar Rapids, Edgewood Road to US 30, Reevaluation of the Project Corridor and Changes in Environmental Requirements, Funding and US Army COE 404 Permit Issuance, Linn County, IA , Comment Period Ends: September 24, 2001, Contact: Bobby W. Blackmon (515) 233–7300.

*EIS No. 010281,* Draft EIS, FTA, CA, BART-Oakland International Airport Connector, Extending south from the Existing Coliseum BART Station, about 3.2 miles, to the Airport Terminal Area, Alameda County, CA, Comment Period Ends: September 17, 2001, Contact: Donna Turchie (415) 744–3116.

*EIS No. 010282,* Draft Supplement, FHW, NC, US–1 Transportation Improvements, Updated Information, From Sandhill Road (NC 1971) to just North of Fox Road (NC 1606) to Marston Road (NC 1001) Associated with this Extension, Funding, and COE Section 404 Permit, City of Rockingham, Richmond County, NC , Comment Period Ends: September 17,

2001, Contact: Nicholas L. Graf, P.E. (919) 856–4346.

*EIS No. 010283,* Draft EIS, AFS, PR, Caribbean National Forest, Constructing the Rio Sabana Picnic Area Construction, Rio Sabana Trail Reconstruction and Highway PR 191 Reconstruction from Km. 21.3 to Km 20.0, Special-Use-Permit, PR, Comment Period Ends: September 17, 2001, Contact: Ricardo Garcia (787) 888–5640.

*EIS No. 010284,* Draft EIS, AFS, NM, Talpa-to-Penasco Proposed to Construct and Operate 69 kV Transmission Line, Kit Carson Electric Cooperative, Carson National Forest, Camine Real Ranger District, Taos County, NM, Comment Period Ends: October 01, 2001, Contact: Sher Churchill (505) 758–6200. This document is available on the Internet at http://www.fs.fed.us/r3/carson.

*EIS No. 010285,* Draft Supplement, AFS, CO, Uncompahgre National Forest Travel Plans Revision, And Forest Plan Amendment, Updated Information, Grand Mesa, Uncompahgre and Gunnison National Forests, Garrison, Hinsdale Mesa, Montrose, Ouray, San Juan Counties, CO, Comment Period Ends: September 17, 2001, Contact: Jeff Burch (970) 874–6600. This document is available on the Internet at www.fs.fed.us/r2/gmug.

*EIS No. 010286,* Final EIS, FHW, MO, MO–60 Transportation Improvements, East of Willow Springs to West of Van Buren, Funding, Forest Land Acquisition and US Army COE 404 Permit Issuance, ( Job No. J9P0455) Howell, Shannon and Carter Counties, MO , Wait Period Ends: September 7, 2001, Contact: Don Neumann (573) 636–7104.

*EIS No. 010287,* Final EIS, COE, CA, Delta Wetlands Project, Construction and Operation Water Storage Project on Four Islands in the Sacramento-San Joaquin Delta, Approval of Permits, San Joaquin and Contra Costa Counties, CA , Wait Period Ends: September 4, 2001, Contact: Mike Finan (916) 557–5324.

Dated: July 31, 2001.

**Joseph C. Montgomery,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 01–19505 Filed 8–2–01; 8:45 am]

**BILLING CODE 6560–50–U**

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6620–6]**

## Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 2000 (65 FR 20157).

### Draft EISs

*ERP No. D–AFS–J65345–MT Rating EC2,* Pink Stone Fire Recovery and Associated Activities, To Reduce Existing and Expected Future Fuel Accumulations, Kootena National Forest, Rexford Ranger District, Lincoln County, MT.

Summary: EPA expressed environmental concerns with adverse impacts of timber harvest to fire stressed streams with increased peak flows. EPA recommended that the final EIS assure that the preferred alternative avoid and minimize further adverse impacts to already fire stressed water bodies and include the necessary monitoring and mitigation of watershed effects.

*ERP No. D–AFS–L65373–AK Rating EO2,* Gravina Island Timber Sale, Implementation, Timber Harvest and Related Activities, Ketchikan-Misty Fiords Ranger District, Tongass National Forest, AK.

Summary: EPA expressed environmental objections to the severity of impacts from building and operating new roads in roadless areas, cumulative impacts to adjacent non-federal lands, to old growth forest and associated deer habitat, to an important subsistence resource, and to aquatic resources. EPA recommends that the final EIS further analyze cumulative impacts, the range of alternatives, including a new alternative that combines helicopter and ground based harvest and mitigation measures, such as better management of forest roads following timber harvest, including road obliteration.

*ERP No. D–FHW–G40165–NM Rating LO,* US 70 Corridor Improvement, Between Ruidoso Downs to Riverside, Implementation, Right-of-Way Acquisition, Lincoln County, NM.

Summary: EPA has no objections to the selection of the preferred alternative with implementation of the mitigation measures as described in the DEIS. The final mitigation plan must be incorporated into the Record of Decision Document as presented in the Final EIS.

*ERP No. D–FHW–G40166–LA Rating EC2,* I–49 Connector, Construction from Evangeline Thruway US–90 and US–197 in Urbanized Lafayette, Funding, COE Section 10 and 404 Permits, Parish of Lafayette, LA.

Summary: EPA expressed environmental concerns regarding air quality, water resources, solid waste sites, and mitigation commitments. EPA suggested additional information be presented in the FEIS regarding these issues.

*ERP No. D–FHW–K40244–CA Rating EC2,* CA–120 Oakdale Expressway Project, Construction and Operation, Post Mile 3.0 to Post Mile R12.9 near Oakdale, Funding, US Army COE Section 404 and NPDES Permits Issuance, Stanislaus County, CA.

Summary: EPA supported the need to alleviate congestion and improve safety, but expressed concern with potential indirect and cumulative impacts and the adequacy of proposed mitigation measures. EPA also acknowledged that Alternative 2A appeared to have the least environmental impacts on high quality riparian forest, oak woodlands, and specific threatened and endangered species and appeared to have the most balanced earthwork and minimal to moderate impacts on agricultural lands, business and home relocations, utilities, and visual quality.

*ERP No. D–FTA–E54010–NC Rating EC1,* Phase I Regional Rail System Improvements, Durham to Raleigh to North Raleigh, Implementation, Durham and Wake Counties, NC.

Summary: EPA expressed concerns regarding wetlands, noise, and minority and low-income populations impacts.

*ERP No. D–FTA–K54024–CA Rating EC2,* San Fernando Valley East-West Transit Corridor Project, Bus Rapid Transit ((BRT) ) on former Burbank/Chandler Southern Pacific Rail, Right-of-Way, Development and Implementation, Los Angeles County. CA.

Summary: EPA expressed concerns regarding air conformity analysis and the provision of adequate mitigation measures as well as the potential environmental justice impacts of the park-and-ride facility proposed at the Oxnard/Van Nuys Station. EPA requested additional analysis and documentation on both of these issues.

### Final EISs

*ERP No. F–FHW–G40159–TX,* US Highway 183 Alternate Project,

Improvements from RM–620 to Approximately Three Miles North of the City of Lander, Williamson County, TX.

Summary: EPA had no additional comments to offer on the FEIS.

*ERP No. F–FHW–K40219–CA,* U.S. Highway 101 Transportation Improvement Project, between Vineyard Avenue to Johnson Drive, Funding, in the Cities of Oxnard and San Buenaventura, Ventura County, CA.

Summary: EPA is satisfied that the FEIS has adequately addressed our comments in the DEIS and the supplemental DEIS.

*ERP No. F–FTA–K54025–CA,* ADOPTION—64-Acre Tract Intermodal Transit Center, Construction and Operation, Lake Tahoe Basin Management Unit, Tahoe City, Placer County, CA.

Summary: No formal comment letter was sent to the preparing agency.

*ERP No. F–IBR–K38007–CA,* Grassland Bypass Project (2001 Use Agreement), New Use Agreement for a Period from October 1, 2001 through December 21, 2009, Implementation, San Joaquin River and Merced River, Fresno, Merced and Stanslaus Counties, CA.

Summary: ERP No. F–JUS–L81012–WA Tacoma/Seattle Area Detention Center, Construction and Leasing, Pierce County, WA.

Summary: No formal comment letter was sent to the preparing agency.

*ERP No. F–NRC–E06020–GA,* Generic EIS—Edwin I. Hatch Nuclear Plant, Unit 1 and 2, License Renewal of Nuclear Plants, Supplement 4 to NUREG–1437, Altamaha River, Appling County, GA.

Summary: EPA continues to have environmental concerns about the project. Specifically, surface and groundwater use conflicts and future implementation plans merit further discussion as the project progresses.

Dated: July 31, 2001.

**Joseph C. Montgomery,**

*Director, NEPA Compliance Division, Office of Federal Activities*

[FR Doc. 01–19506 Filed 8–2–01; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

July 27, 2001.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before October 2, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0853.

*Title:* Receipt of Service Confirmation Form, and Adjustment of Funding Commitment, and Certification by Administrative Authority to Billed Entity of Compliance with Children's Internet Protection Act—Universal Service for Schools and Libraries.

*Form No.:* FCC Form 486, FCC Form 500, and FCC Form 479.

*Type of Review:* Extension.

*Respondents:* Business or Other for Profit; Not-for-Profit Institutions.

*Number of Respondents:* 40,000.

*Estimated Time Per Response:* 15.37 hours per response (avg).

*Total Annual Burden:* 615,000 hours.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $0.

*Frequency of Response:* On occasion; Third Party Disclosure; Recordkeeping.

*Needs and Uses:* Section 1721 and related sections of the Children's Internet Protection Act provide that in order to be eligible under section 254 of the Communications Act of 1934, as amended (the Act), to receive discounted Internet access, internet services, and internal connection services, schools and libraries that have computers with Internet access must have in place certain Internet safety policies. The Commission adopted rules to implement CIPA. FCC Form 486 has been modified to incorporate the certifications required by the statute. All members of the consortium must submit signed certifications to the billed entity of each consortium on a new form, FCC Form 479, certification to Consortium Leader of Compliance with the Children's Internet Protection Act. The Billed entity is required to retain copies of the completed and signed FCC Form 479. FCC Form 500 is used to inform the fund administrator that the eligible entity participating in the universal service support mechanism wishes to reduce its funding commitment amount or has modified the beginning or ending date for services received during the fund year.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 01–19501 Filed 8–2–01; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

July 27, 2001.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper

performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before October 2, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A–804, 445 Twelfth Street, SW., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0989.

*Title:* Procedures for Applicants Requiring Section 214 Authorization for Domestic Interstate Transmission Lines Acquired through Corporate Control.

*Form No.:* N/A.

*Type of Review:* Extension.

*Respondents:* Business or Other for Profit.

*Number of Respondents:* 25.

*Estimated Time Per Response:* 65 hours per response (avg).

*Total Annual Burden:* 1625 hours.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $0.

*Frequency of Response:* On occasion.

*Needs and Uses:* FCC issued a Public Notice announcing procedures for common carriers requiring authorization under section 214 of the Communications Act of 1934, as amended, to acquire domestic interstate transmission lines through an acquisition of corporate control. Under section 214, carriers must obtain FCC approval before constructing, acquiring, or operating an interstate transmission lines. The information will be used to ensure that applicants comply with the requirements of 47 U.S.C. 214.

*OMB Control No.:* 3060–0988.

*Title:* Election to Freeze Part 36 Categories and Allocations.

*Form No.:* N/A.

*Type of Review:* Extension.

*Respondents:* Business or Other for Profit.

*Number of Respondents:* 700.

*Estimated Time Per Response:* .50 hours per response (avg).

*Total Annual Burden:* 350 hours.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $0.

*Frequency of Response:* On occasion; One-time Requirement.

*Needs and Uses:* The Commission imposed an interim freeze of the Part 36 category relationships and jurisdictional cost allocation factors. The Commission recognized that smaller rate-of-return incumbent local exchange carriers, because of their differing business structures, would not be required to freeze both their Part 36 categories and allocation factors, unlike price cap carriers. The Commission found that those rate-of-return carriers that desire to freeze their categories may elect to do so by July 1, 2001. Rate-of-return carriers that do not participate in Association tariffs will be able to elect to freeze their categories by notifying the Commission of their election.

*OMB Control No.:* 3060–0992.

*Title:* Request for Extension of the Implementation Deadline for Non-Recurring Services, CC Docket No. 96–45 (FCC 01–195) and 47 CFR Section 54.507(d)(1)–(4).

*Form No.:* N/A.

*Type of Review:* Extension.

*Respondents:* Not-for-profit institutions; Business or Other for Profit.

*Number of Respondents:* 850.

*Estimated Time Per Response:* 1 hour per response (avg).

*Total Annual Burden:* 850 hours.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $0.

*Frequency of Response:* On occasion; Third Party Disclosure.

*Needs and Uses:* 47 CFR Section 54.507(d) provides additional time for recipients under the schools and libraries universal service support mechanism to implement contracts or agreements with service providers for non-recurring services. 47 CFR Section 54.507(d) extends the deadline for receipt of non-recurring services from June 30 to September 30 following the close of the funding year. 47 CFR section 54.507(d) establishes a deadline for the implementation of non-recurring services for certain qualified applicants who are unable to complete implementation by the September 30 deadline. Applicants may qualify for an extension of the September 30 deadline for non-recurring services if they satisfy one of four criteria. See 47 CFR section 54.507(d). Applicants who wish to satisfy criterion (3) should submit documentation to the Administrator requesting relief on these grounds on or before the original non-recurring services deadline. With regard to criterion (4), applicants must certify to the Administration that its service provider was unwilling to deliver or install non-recurring services before the expiration of the original non-recurring services installation deadline, because the Administrator had withheld payment for those services on a properly-submitted invoice for more than 60 days after the submission of the invoice. Applicants must make this certification on or before the original non-recurring service installation deadline. 47 CFR section 54.507(d) will provide schools and libraries with more time to install non-recurring services.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 01–19503 Filed 8–2–01; 8:45 am]

**BILLING CODE 6712–01–P**

---

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collections Approved by Office of Management and Budget

July 25, 2001.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

**Federal Communications Commission**

*OMB Control No.:* 3060–0992.

*Expiration Date:* 01/31/2002.

*Title:* Request for Extension of the Implementation Deadline for Non-Recurring Services, CC Docket No. 96–45 (FCC 01–195) and 47 CFR Section 54.507(d)(1)–(4).

*Form No.:* N/A.

*Respondents:* Not-for-profit institutions; Business or other for-profit.

*Estimated Annual Burden:* 850 respondents; 1 hour per response (avg.); 850 total annual burden hours.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $0.

*Frequency of Response:* On occasion; Third Party Disclosure.

*Description:* 47 CFR Section 54.507(d) provides additional time for recipients under the schools and libraries universal service support mechanism to implement contracts or agreements with service providers for non-recurring services. 47 CFR section 54.507(d) extends the deadline for receipt of non-recurring services from June 30 to September 30 following the close of the funding year. 47 CFR section 54.507(d) establishes a deadline for the implementation of non-recurring services for certain qualified applicants who are unable to complete implementation by the September 30 deadline. Applicants may qualify for an extension of the September 30 deadline for non-recurring services if they satisfy one of four criteria. See 47 CFR section 54.507(d). Applicants who wish to satisfy criterion (3) should submit documentation to the Administrator requesting relief on these grounds on or before the original non-recurring services deadline. With regard to criterion (4), applicants must certify to the Administration that its service provider was unwilling to deliver or install non-recurring services before the expiration of the original non-recurring services installation deadline, because the Administrator had withheld payment for those services on a properly-submitted invoice for more than 60 days after the submission of the invoice. Applicants must make this certification on or before the original non-recurring service installation deadline. *See* 47 CFR 54.507(d). 47 CFR section 54.507(d) will provide schools and libraries with more time to install non-recurring services.

*Obligation to respond:* Required to obtain or retain benefits.

*OMB Control No.:* 3060–0717.

*Expiration Date:* 07/31/2004.

*Title:* Billed Party Preference for InterLATA 0+ Calls, CC Docket No. 92–77 (47 CFR Sections 64.703(a), 64.709, 64.710).

*Form No.:* N/A.

*Respondents:* Business or other for-profit.

*Estimated Annual Burden:* 1500 respondents; 466.1 hours per response (avg.); 699,167 total annual burden hours (for all collections approved under this control number).

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $216,000.

*Frequency of Response:* On occasion; Annually; Third Party Disclosure.

*Description:* 47 CFR Section 64.703(a)(1)–(3) requires that operator service providers (OSPs) disclose to consumers their identify, and upon request by the consumer, the rates for the call, collection methods for the charges, and complaint procedures. (No. of respondents: 630; hours per response: 1058.2 hours; total annual burden: 666,666 hours). Pursuant to 47 CFR section 64.703(a)(4) OSPs are required to disclose orally to away-from-home callers, at no cost to such callers, how they may obtain all applicable charges for a call placed through an OSP, without the caller having to hang up to dial a separate number. The OSP must disclose, audibly and distinctly to the consumer, at no charge and before connecting any interstate call, how to obtain rate quotations if the call is to be placed through the carrier selected by the payphone or premises owner. (No. of respondents: 630; hours per response: 21.76 hours; total annual burden: 13,711 hours). 47 CFR Section 64.709 codifies the requirements for OSPs to file informational tariffs with the Commission. (No. of respondents: 300; hours per response: 50 hours; total annual burden: 16,500 hours). 47 CFR Section 64.710 requires providers of interstate operator services to inmates at correctional institutions to identify themselves, audibly and distinctly, to the party to be billed for the call and also disclose immediately thereafter to that party how he or she, without having to hang up to dial a separate number, may obtain the charges for the call, before the carrier may connect, and bill for, a call. (No. of respondents: 570; hours per response: 4 hours; total annual burden: 2280 hours). See 47 CFR Sections 64.703, 64.709 and 64.710. These requirements are necessary to implement 47 U.S.C. Section 226. Obligation to respond: Mandatory.

*OMB Control No.:* 3060–0855.

*Expiration Date:* 7/31/2004.

*Title:* Telecommunications Reporting Worksheet and Associated Requirements, CC Docket No. 96–45.

*Form No.:* FCC Forms 499–A and 499–Q.

*Respondents:* Business or other for-profit.

*Estimated Annual Burden:* 5000 respondents; 16.49 hours per response (avg.); 82,487 total annual burden hours (for all collections approved under this control number).

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $14,000.

*Frequency of Response:* On occasion; Quarterly; Annually; Recordkeeping; Third Party Disclosure.

*Description:* Pursuant to the Communications Act of 1934, as amended, telecommunications carriers (and certain other providers of telecommunications services) must contribute to the support and cost recovery mechanisms for telecommunications relay services, numbering administration, number portability, and universal service. OMB approved the Commission's proposed information collections contained in the Notice of Proposed Rulemaking (NPRM) issued in CC Docket No. 96–45, released May 8, 2001 (FCC01–145). In the NPRM the Commission sought comment on how to streamline and reform both the manner in which the Commission assesses carrier contributions to the universal service fund and the manner in which carriers may recover those costs from their customers. Section 254 of the Communications Act of 1934, as amended, requires carriers providing interstate telecommunications services to contribute to universal service. Under the current universal service rules, carriers' contributions are assessed as a percentage of their interstate and international end-user telecommunications revenues. The Commission specifically sought comment on a proposal to require carriers to contribute to the universal service mechanisms based on a percentage of their collected, instead of gross-billed interstate, and international end-user telecommunications revenues. Under this proposal, carriers may be required to file periodic current revenue reports in addition to the one historical revenue report already required annually. (No. of respondents: 5000; hours per response: 9.5 hours for 3500 respondents for the annual filing and 6 hours per respondent for each quarterly filing, if adopted; total annual burden hours: 81,250 hours). The Commission also sought comment on whether to assess universal service contributions on a flat-fee basis, such as per-line or per account. Under this proposal, carriers may be required to periodically report their line counts or number of accounts. Carriers would continue to file FCC Form 499–A annually as they are required to do under the existing methodology. However, carriers may also be subject to a quarterly filing. (Number of respondents: 5000; hours per response: 6 hours for 3500 respondents for the annual filing, and 3 hours for 2000 respondents for quarterly filing, if adopted; total annual burden: 45,000 hours). OMB also extended approval for the current FCC Form 499–A, FCC Form 499–Q and other requirements associated with the collection. Carriers are required to file FCC Form 499–A annually; carriers are required to file on a quarterly basis FCC Form 499–Q to report their revenues from the prior quarter. Carriers are required to file FCC Form 499–Q by the beginning of the second month in each quarter (i.e., February 1, May 1, August

1, and November 1). Copies of the worksheets and instructions may be downloaded from the Commission's forms web page (*www.fcc.gov/forpage.html*). Copies may also be obtained from NECA at 973–560–4400. (No. of respondents: 5000; hours per response: 16.4 hours; total annual burden: 82,487 hours). The information is used to calculate contributions to the universal service support mechanisms. Obligation to respond: Mandatory.

Public reporting burden for the collections of information are as noted above. Send comments regarding the burden estimates or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 01–19502 Filed 8–2–01; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1380–DR]**

### Louisiana; Amendment No. 5 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Louisiana, (FEMA–1380–DR), dated June 11, 2001, and related determinations.

**EFFECTIVE DATE:** July 17, 2001.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–5920.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Louisiana is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 11, 2001:

West Feliciana Parish for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Lacy E. Suiter,**

*Assistant Director, Readiness, Response and Recovery Directorate.*

[FR Doc. 01–19408 Filed 8–2–01; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1384–DR]**

### Oklahoma; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Oklahoma, (FEMA–1384–DR), dated June 29, 2001, and related determinations.

**EFFECTIVE DATE:** July 18, 2001.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–5920.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 29, 2001:

Okfuskee, Oklahoma, Payne, and Pittsburg Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Joe M. Allbaugh,**

*Director.*

[FR Doc. 01–19409 Filed 8–2–01; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1378–DR]**

### West Virginia; Amendment No. 9 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of West Virginia (FEMA–1378–DR), dated June 3, 2001, and related determinations.

**EFFECTIVE DATE:** July 23, 2001.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective July 23, 2001.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Joe M. Allbaugh,**

*Director.*

[FR Doc. 01–19407 Filed 8–2–01; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

**SUMMARY:**

### Background

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instrument(s) are placed

into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

**FOR FURTHER INFORMATION CONTACT:** Federal Reserve Board Clearance Officer—Mary M. West—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829); OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7860).

**Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Reports**

1. *Report title:* Report of Selected Balance Sheet Items for Discount Window Borrowers.
*Agency form number:* FR 2046.
*OMB Control number:* 7100–0289.
*Frequency:* On occasion.
*Reporters:* Depository institutions.
*Annual reporting hours:* 2,654 hours.
*Estimated average hours per response:* 0.75 hours for adjustment or extended credit borrower; 0.25 hours for seasonal credit borrowers.
*Number of respondents:* 684.
Small businesses are affected.
*General description of report:* This information collection is required by sections 10B, 11(a)(2), and 11(i) of the Federal Reserve Act (12 U.S.C. 347b and 248(a)(2) and (i)) and individual respondent data are regarded as confidential (5 U.S.C. 552(b)(4)).
*Abstract:* The Federal Reserve's Regulation A, ''Extensions of Credit by Federal Reserve Banks,'' requires that Reserve Banks review balance sheet data in order to guard against inappropriate discount window borrowing situations. Borrowers report certain balance sheet data for a period that encompasses the dates of borrowing.

2. *Report title:* Annual Report on Status of Disposition of Assets Acquired in Satisfaction of Debts Previously Contracted.
*Agency form number:* FR 4006.
*OMB Control number:* 7100–0129.
*Frequency:* Annual.
*Reporters:* Bank holding companies.
*Annual reporting hours:* 3,000 hours.
*Estimated average hours per response:* 5 hours.
*Number of respondents:* 600.
Small businesses are affected.
*General description of report:* This information collection is required (12 U.S.C.§§ 1842(a) and 1843(c)(2)) and may be given confidential treatment upon request (5 U.S.C. § 552(b)(4)).
*Abstract:* Bank holding companies that have acquired assets or shares through foreclosure in the ordinary course of collecting a debt previously contracted (DPC) are required to submit the report annually for assets or shares that have been held beyond two years from the acquisition date. The report does not have a required format; bank holding companies submit the information in a letter. The letter contains information on the progress made to dispose of such assets or shares and also requests permission for a one-year extension to hold them, as applicable. The Federal Reserve may grant requests for up to three one-year extensions. This report is required pursuant to the Board's authority under the Bank Holding Company Act and Regulation Y. The Federal Reserve uses the information to fulfill its statutory obligation to supervise bank holding companies.

3. *Report title:* Notice of Branch Closure.
*Agency form number:* FR 4031.
*OMB Control number:* 7100–0264.
*Frequency:* On occasion.
*Reporters:* State member banks.
*Annual reporting hours:* 783 hours.
*Estimated average hours per response:* 2 hours for reporting requirements; 1 hour for disclosure requirements; 8 hours for recordkeeping requirements.
*Number of respondents:* 226.
Small businesses are affected.
*General description of report:* This information collection is required (12 U.S.C. 1831r–l(a)(1)) and may be given confidential treatment upon request (5 U.S.C. § 552(b)(4)).
*Abstract:* These reporting, recordkeeping, and disclosure requirements regarding the closing of any branch of an insured depository institution are imposed by section 228 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). There is no reporting form associated with the reporting portion of this information collection; state member banks notify the Federal Reserve by letter prior to closing a branch. The Federal Reserve uses the information to fulfill its statutory obligation to supervise state member banks.

**Final Approval Under OMB Delegated Authority of the Reinstatement For One Year, Without Revision, of the Following Report**

1. *Report title:* Report of Terms of Credit Card Plans.
*Agency form number:* FR 2572.
*OMB Control number:* 7100–0239.
*Frequency:* Semiannual.
*Reporters:* Commercial banks, savings and loans, savings banks, and finance companies.
*Annual reporting hours:* 75 hours.
*Estimated average hours per response:* 0.25 hours.
*Number of respondents:* 150.
Small businesses are not affected.
*General description of report:* The Board is authorized to collect this voluntary information collection (15 U.S.C. 1646(b)). The data are not considered confidential.
*Abstract:* This report was collected for the last time as of January 31, 2000; it was discontinued prior to the July 2000 reporting date pursuant to the Federal Reports Elimination and Sunset Act of 1995 (Sunset Act) (PL 104–66). In December 2000, the Congress approved the American Homeownership and Economic Opportunity Act of 2000 (Act) that restored the reporting of this information collection, along with forty others. Title XI of the Act states that section 3003(a)(1) of the Sunset Act ''shall not apply to any report required to be submitted under any of the following provisions of law: * * * Section 8 of the Fair Credit and Charge Card Disclosure Act of 1998 (15 U.S.C. 1637 note); * * *''. Upon reinstatement, this report will collect data on credit card pricing and availability from a sample of at least 150 financial institutions that offer credit cards. The information will be reported to the Congress and made available to the public in order to promote competition within the industry.

Board of Governors of the Federal Reserve System, July 30, 2001.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 01–19373 Filed 8–2–01; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

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

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

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

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 27, 2001.

**A. Federal Reserve Bank of Atlanta** (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

*1. First Pulaski National Corporation*, Pulaski, Tennessee; to merge with Belfast Holding Company, Belfast, Tennessee, and thereby indirectly acquire Bank of Belfast, Belfast, Tennessee.

**B. Federal Reserve Bank of Chicago** (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

*1. Bank of Iowa Holding Company*, Clarinda, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers State Bank, Schleswig, Iowa.

*2. Panhandle Aviation, Inc*, Clarinda, Iowa; to acquire 100 percent of the voting shares of Bank of Iowa Holding Company, Clarinda, Iowa, and thereby indirectly acquire voting shares of Farmers State Bank, Schleswig, Iowa.

*3. Kerndt Bank Services, Inc.*, Lansing, Iowa; to acquire 100 percent of the voting shares of Westmont Corporation, West Union, Iowa, and thereby indirectly acquire voting shares of Farmers Savings Bank, West Union, Iowa.

Board of Governors of the Federal Reserve System, July 30, 2001.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 01–19374 Filed 8–2–01; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RESERVE SYSTEM

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

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

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

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 30, 2001.

**A. Federal Reserve Bank of Philadelphia** (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

*1. Mauch Chunk Trust Financial Corp.*, Jim Thorpe, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Mauch Chunk Trust Company, Jim Thorpe, Pennsylvania.

Board of Governors of the Federal Reserve System, July 31, 2001.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 01–19439 Filed 8–2–01; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RESERVE SYSTEM

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

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

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

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 17, 2001.

**A. Federal Reserve Bank of Philadelphia** (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

*1. Harleysville National Corporation*, Harleysville, Pennsylvania; to engage *de novo* through HNC Reinsurance Company, Phoenix, Arizona, in insurance agency and underwriting, credit life reinsurance, pursuant to § 225.28(b)(11)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, July 30, 2001.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 01–19375 Filed 8–2–01; 8:45 am]

BILLING CODE 6210–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Request for Nominations of Candidates To Serve on the National Vaccine Advisory Committee, Department of Health and Human Services

The Public Health Service (PHS) is soliciting nominations for possible membership on the National Vaccine Advisory Committee (NVAC). This committee studies and recommends ways to encourage the availability of an adequate supply of safe and effective vaccination products in the States; recommends research priorities and other measures the Director of the National Vaccine Program should take to enhance the safety and efficacy of vaccines; advises the Director of the Program in the implementation of sections 2102, 2103, and 2104, of the PHS Act; and identifies annually for the Director of the Program the most important areas of government and non-government cooperation that should be considered in implementing sections 2102, 2103, and 2104, of the PHS Act.

Nominations are being sought for individuals engaged in vaccine research or the manufacture of vaccines or who are physicians, members of parent organizations concerned with immunizations, or representatives of State or local health agencies, or public health organizations. Federal employees will not be considered for membership. Members may be invited to serve a four-year term.

Close attention will be given to minority and female representation; therefore nominations from these groups are encouraged.

The following information is requested: name, affiliation, address, telephone number, and a current curriculum vitae. Nominations should be sent, in writing, and postmarked by September 30, 2001, to: Gloria Sagar, Committee Management Specialist, NVAC, National Vaccine Program Office, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, M/S D–66, Atlanta, Georgia 30333.

Telephone and facsimile submission cannot be accepted.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 26, 2001.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 01–19420 Filed 8–2–01; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry Public Meeting of the Inter-tribal Council on Hanford Health Projects (ICHHP) in Association With the Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee

*Name:* Public meeting of the Inter-tribal Council on Hanford Health Projects (ICHHP) in association with the Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Hanford Health Effects Subcommittee (HHES).

*Time and Date:* 9 a.m.–4:30 p.m., July 25, 2001.

*Place:* Tamastslikt Cultural Institute, 72789 Highway 331, Pendleton, OR. Telephone: (541) 276–2323.

*Status:* Meeting Cancel. Published in **Federal Register:** June 27, 2001. (Volume 66, Number 124)] [Notices] [Page 34205] From the **Federal Register** Online via GPO Access [wais.access.gpo.gov] [DOCID:fr27jn01–89]

*Contact Persons for More Information:* French Bell, Executive Secretary HHES, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE M/S E–54, Atlanta, Georgia 30333, telephone 1–888–42–ATSDR(28737), fax 404/498–1744.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 26, 2001.

**Carolyn Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 01–19421 Filed 8–2–01; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Interagency Committee on Smoking and Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

*Name:* Interagency Committee on Smoking and Health (ICSH).

*Date and Time:* 9:00 a.m.–4:00 p.m., August 14, 2001.

*Place:* Secretary's Conference Room (Stonehenge) Hubert H. Humphrey Building, 200 Independence Avenue, SW., 6th Floor, Washington, DC 20201.

*Status:* Open to the public, limited only by the space available. Those who wish to attend are encouraged to register with the contact person listed below. If you will require a sign language interpreter, or have other special needs, please notify the contact person by 4:30 E.S.T. on August 7, 2001.

*Purpose:* The Interagency Committee on Smoking and Health advises the Secretary, Department of Health and Human Services, and the Assistant Secretary for Health in the: (a) Coordination of all research and education programs and other activities within the Department and with other federal, state, local and private agencies, and (b) establishment and maintenance of liaison with appropriate private entities, federal agencies, and state and local public health agencies with respect to smoking and health activities.

*Matters to be Discussed:* The agenda will focus on tobacco cessation activities.

*Contact Person for Additional Information:* Substantive program information as well as summaries of the meeting and roster of committee members will be available on the Internet at www.cdc.gov/tobacco in mid-September, or may be obtained from Ms. Monica L. Swann, Interagency Committee on Smoking and Health, Office on Smoking and Health, NCCDPHP, CDC, 200 Independence Avenue, SW., Room 317B, Washington, DC., 20201, telephone (202) 205–8500.

Due to difficulties in scheduling this meeting, and the necessity to meet publication deadlines, this notice is being published less than 15 days prior to meeting.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 26, 2001.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 01–19422 Filed 8–2–01; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: CMS–R–227]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Health Care Financing Administration, HHS.

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:* Research and Analytic Support for Implementing Peformance Measurement in Medicare Fee for Service; *Form No.:* CMS–R–227 (OMB# 0938–0718); *Use:* As required by the Balanced Budget Act (BBA), Section 1851(d), the Health Care Financing Administration (HCFA) needs to develop comparable performance measures for Fee For Service (FFS) Medicare. This project will enable HCFA to evaluate the effectiveness and outcomes of FFS services purchased. HCFA may potentially disseminate this information to Medicare beneficiaires so that they may make informed health care choices; *Frequency:* Biannually; *Affected Public:* Individuals or households, business or other for-profit, not-for-profit institutions, farms, Federal Government, and State, Local or Tribal Government;

*Number of Respondents:* 6,670;
*Total Annual Responses:* 6,670;
*Total Annual Hours:* 2,223.

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, 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 HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: Melissa Musotto, Room: N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

**Julie Boughn,**

*Acting HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.*

[FR Doc. 01–19388 Filed 8–2–01; 8:45 am]

BILLING CODE 4120–03–U

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–1193–NC]**

### Medicare and Medicaid Programs; Announcement of Applications From Hospitals Requesting Waivers for Organ Procurement Service Areas

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice with comment period.

**SUMMARY:** This notice announces three applications that we have received from hospitals requesting waivers from entering into agreements with their designated organ procurement organizations (OPOs), in accordance with section 1138(a)(2) of the Social Security Act. This notice requests comments from OPOs and the general public for our consideration in determining whether we should grant these waivers.

**COMMENT DATE:** We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on October 2, 2001.

**ADDRESSES:** In commenting, please refer to file code CMS–1193–NC. Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and three copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1193–NC, P.O. Box 8010, Baltimore, MD 21244–8010.

To ensure that mailed comments are received in time for us to consider them, please allow for possible delays in delivering them.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Mark A. Horney, (410) 786–4554.

**SUPPLEMENTARY INFORMATION:** *Inspection of Public Comments:* Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Blvd., Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–9994.

### I. Background

Organ Procurement Organizations (OPOs) are not-for-profit organizations that collect human organs from hospitals and distribute them to transplant centers around the country. Qualified OPOs are designated by the Centers for Medicare & Medicaid Services (CMS) to collect organs in CMS-defined exclusive geographic service areas, according to section 371(b)(1)(E) of the Public Health Service Act (42 U.S.C. 273(b)(1)(E)) and our regulations at 42 CFR 486.307. Once an OPO has been designated for an area, hospitals in that area that participate in Medicare and Medicaid are required to work with that OPO in providing organs for transplant, according to section

1138(a) of the Social Security Act (the Act), and our regulations at § 482.45.

Section 1138(a)(1)(A)(iii) of the Act provides that a hospital must notify the designated OPO (for the service area in which it is located) of potential organ donors. Under section 1138(a)(1)(C) of the Act, every participating hospital must have an agreement to identify potential donors only with that particular designated OPO.

However, section 1138(a)(2) of the Act provides that a hospital may obtain a waiver of these requirements from the Secretary under certain specified conditions. A waiver allows the hospital to have an agreement with an OPO, other than the one initially designated by CMS, if the hospital meets certain conditions specified in section 1138(a)(2) of the Act. In addition, the Secretary may review additional criteria described in section 1138(a)(2)(B) of the Act to evaluate the hospital's request for a waiver.

Section 1138(a)(2)(A) of the Act states that in granting a waiver, the Secretary must determine that the waiver—(1) is expected to increase organ donations; and (2) will ensure equitable treatment of patients referred for transplants within the service area served by the designated OPO and within the service area served by the OPO with which the hospital seeks to enter into an agreement under the waiver. In making a waiver determination, section 1138(a)(2)(B) of the Act provides that the Secretary may consider, among other factors: (1) Cost-effectiveness; (2) improvements in quality; (3) whether there has been any change in a hospital's designated OPO due to the changes made in definitions for metropolitan statistical areas (MSAs); and (4) the length and continuity of a hospital's relationship with an OPO other than the hospital's designated OPO. Under section 1138(a)(2)(D) of the Act, the Secretary is required to publish a notice of any waiver application within 30 days of receiving the application and offer interested parties an opportunity to comment in writing for 60 days, beginning on the publication date in the **Federal Register**.

The criteria that the Secretary uses to evaluate the waiver in these cases are the same as those described above under sections 1138(a)(2)(A) and (B) of the Act and have been incorporated into the regulations at § 486.316(e) and (f).

## II. Waiver Request Procedures

In October 1995, we issued a Program Memorandum (Transmittal No. A–95–11) detailing the waiver process and discussing the information that hospitals must provide in requesting a waiver. We indicated that upon receipt of the waiver requests, we would publish a **Federal Register** notice to solicit public comments, as required by section 1138(a)(2)(D) of the Act.

According to these requirements, we will review the requests and comments received. During the review process, we may consult on an as-needed basis with the Public Health Service's Division of Transplantation, the United Network for Organ Sharing, and our regional offices. If necessary, we may request additional clarifying information from the applying hospital or others. We will then make a final determination on the waiver requests and notify the affected hospitals and OPOs.

## III. Hospital Waiver Requests

As permitted by § 486.316(e), three hospitals have requested waivers in order to enter into agreements with alternative, out-of-area OPOs. The listing below indicates the name of the facility, the city and State of the facility, the requested OPO, and the currently designated area OPO. This request is not a result of a governmental change; therefore, the exception under § 486.316(g) does not apply to these three hospitals. These hospitals must continue to work with their designated OPOs until the completion of our review.

| Name of facility | City | State | Requested OPO | Designated OPO |
|---|---|---|---|---|
| Portage Health System | Hancock | MI | MIOP | WIWU |
| Trace Regional Hospital | Houston | MS | MSOP | TNMS |
| SCCI Hospital | Lima | OH | OHLP | OHLC |

## IV. Keys to the OPO Codes

The keys to the acronyms used in the listings to identify OPOs and their addresses are as follows:

MIOP
ORGAN PROCUREMENT AGENCY OF MICHIGAN
2203 Platt Road
Ann Arbor, Michigan 48104

MSOP
MISSISSIPPI ORGAN RECOVERY AGENCY, INC.
12 River Bend Place
Suite B
Jackson, Mississippi 39208

TNMS
MID-SOUTH TRANSPLANT FOUNDATION
910 Madison Avenue
Suite 1002
Memphis, Tennessee 38103

WIWU
UNIVERSITY OF WISCONSIN OPO
University of Wisconsin Hospitals and Clinics
600 Highland Avenue
Madison, Wisconsin 53792

OHLP
LIFELINE OF OHIO
770 Kinnear Road
Suite 200
Columbus, Ohio 43212

OHLC
LIFE CONNECTION OF OHIO
40 Wyoming Street
Dayton, Ohio 45409

## V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection requirement should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques or other forms of information technology.

Section 486.316 sets forth the requirements for a Medicare or Medicaid participating hospital to request a waiver permitting the hospital to have an agreement with an OPO other than the OPO designated for the service area in which the hospital is located. The burden associated with these requirements is currently approved under OMB 0938–0688, HCFA–R–13, Conditions of Coverage for Organ

Procurement Organizations, with an expiration date of November 30, 2001.

**Authority:** Section 1138 of the Social Security Act (42 U.S.C. 1320b–8).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare-Hospital Insurance; Program No. 93.774, Medicare-Supplementary Medical Insurance, and Program No. 93.778, Medical Assistance Program)

Dated: July 20, 2001.

**Thomas A. Scully,**

*Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 01–19438 Filed 8–2–01; 8:45 am]

BILLING CODE 4120–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 00N–1638]**

### Alpharma, Inc.; Withdrawal of Approval of NADA

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Alpharma, Inc. The NADA 111–637 provides for use of tylosin Type A medicated articles to make Type C medicated swine, beef cattle, and chicken feeds. Alpharma, Inc., holds NADA 46–415 that also provides for use of tylosin Type A medicated articles to make Type C medicated swine, beef cattle, and chicken feeds. Therefore, this withdrawal of approval does not require amending the animal drug regulations.

**EFFECTIVE DATE:** August 13, 2001.

**FOR FURTHER INFORMATION CONTACT:** Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0159.

**SUPPLEMENTARY INFORMATION:** Alpharma, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, is sponsor of NADA 111–637. The NADA provides for use of tylosin Type A medicated articles to make Type C medicated swine, beef cattle, and chicken feeds. The firm requested that approval of the NADA be withdrawn because the product is no longer manufactured or marketed.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), and further redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with 21 CFR 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 111–637 and all supplements and amendments are withdrawn, effective August 13, 2001.

Alpharma, Inc., holds NADA 46–415 that also provides for use of tylosin Type A medicated articles to make Type C medicated swine, beef cattle, and chicken feeds. Therefore, withdrawal of approval of NADA 111–637 does not require amending the animal drug regulations in 21 CFR 558.625(b)(54).

Dated: July 6, 2001.

**Stephen F. Sundlof,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 01–19463 Filed 8–2–01; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 01D–0262]**

### Draft ''Guidance for FDA Reviewers: Premarket Notification Submissions for Automated Testing Instruments Used in Blood Establishments;'' Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled ''Guidance for FDA Reviewers: Premarket Notification Submissions for Automated Testing Instruments Used in Blood Establishments'' dated August 2001. The draft guidance document provides an overview of the type of information FDA reviewers should expect to be included in premarket notifications submitted to the Center for Biologics Evaluation and Research (CBER) for such devices and the approach FDA reviewers should take in reviewing premarket submissions for automated instruments used for testing in blood establishments. This document, when finalized, is intended for use by establishments that manufacture blood and blood components (e.g., in testing for blood borne pathogens, blood grouping/typing, pre-transfusion compatibility, etc.).

**DATES:** Submit written comments on the draft guidance to ensure their adequate consideration in preparation of the final document by November 1, 2001. General comments on agency guidance documents are welcome at any time.

**ADDRESSES:** Submit written requests for single copies of the draft guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

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

**SUPPLEMENTARY INFORMATION:**

### I. Background

FDA is announcing the availability of a draft document entitled ''Guidance for FDA Reviewers: Premarket Notification Submissions for Automated Testing Instruments Used in Blood Establishments'' dated August 2001. The purpose of a premarket notification (510(k)) submission is to demonstrate that the medical device to be marketed is substantially equivalent to a device that is already legally marketed. The draft guidance presents an overview of the type of information FDA reviewers should expect to be included in premarket notifications submitted to CBER for automated testing instruments used for testing in blood establishments, and clarifies the approach FDA reviewers should take in reviewing these types of premarket submissions. These automated testing instruments are routinely used for detection of blood borne pathogens, blood grouping/typing, and in pre-transfusion compatibility testing.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115; 65 FR 56468, September 19, 2000). This draft guidance document represents the agency's current thinking on the review of premarket notification submissions for automated instruments used for testing in blood establishments. It does not create or confer any rights for or on

any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

**II. Comments**

This draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance document. Submit written comments to ensure adequate consideration in preparation of the final document by November 1, 2001. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**III. Electronic Access**

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cber/guidelines.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: June 29, 2001.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 01–19462 Filed 8–2–01; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### National Vaccine Injury Compensation Program List of Petitions Received

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (''the Program''), as required by section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

**FOR FURTHER INFORMATION CONTACT:** For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place, NW., Washington, DC 20005, (202) 219–9657. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 8A–46, Rockville, MD 20857; (301) 443–6593.

**SUPPLEMENTARY INFORMATION:** The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by HRSA on April 2, 2001, through June 27, 2001.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

(a) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Table but which was caused by'' one of the vaccines referred to in the Table, or

(b) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading ''For Further Information Contact''), with a copy to HRSA addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8–05, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

**List of Petitions**

1. Jessica Zlotnick, Boca Raton, Florida, Court of Federal Claims Number 01–0187V
2. Karen Karibian, New York, New York, Court of Federal Claims Number 01–0188V
3. Marilyn Timony on behalf of Trisha Timony, Old Bridge, New Jersey, Court of Federal Claims Number 01–0189V
4. Gwen Hennessey on behalf of Thomas D. Hennessey, Chanhassen, Minnesota, Court of Federal Claims Number 01–0190V
5. Deborah Rosales-Elkins, Austin, Texas, Court of Federal Claims Number 01–0191V

6. Grace Szekeres, Vienna, Virginia, Court of Federal Claims Number 01–0197V
7. Edith Vig on behalf of Sebastian Vig, Vienna, Virginia, Court of Federal Claims Number 01–0198V
8. Mary Forr on behalf of Kathryn Forr, Deceased, Vienna, Virginia, Court of Federal Claims Number 01–0199V
9. Marcia S. Damron on behalf of Emma Brook Damron, Deceased, Vienna, Virginia, Court of Federal Claims Number 01–0200V
10. Tammi and Michael Fischer on behalf of Alex Fischer, Pittsburgh, Pennsylvania, Court of Federal Claims Number 01–0207V
11. Sharon Kosensky on behalf of Michael Kosensky, Boston, Massachusetts, Court of Federal Claims Number 01–0208V
12. Lia Xiong on behalf of Cuabzog Thor, Deceased, Milwaukee, Wisconsin, Court of Federal Claims Number 01–0212V
13. Laurie Humann on behalf of Antonio Humann, Belle Fourche, South Dakota, Court of Federal Claims Number 01–0213V
14. April Serrette and Tyrone Walker on behalf of Tyriq Amar Walker, Deceased, Orlando, Florida, Court of Federal Claims Number 01–0216V
15. Mary Ashby, Boston, Massachusetts, Court of Federal Claims Number 01–0221V
16. Sharon and Henry Scruggs on behalf of Kendra Scruggs, Deceased, Little Rock, Arkansas, Court of Federal Claims Number 01–0228V
17. Devin Corzine on behalf of Sarah Corzine, Deceased, Cincinnati, Ohio, Court of Federal Claims Number 01–0230V
18. Richard Piscopo, Richmond, Virginia, Court of Federal Claims Number 01–0234V
19. Melody and Roger Stacey on behalf of Emily Ann Stacey, Muskogee, Oklahoma, Court of Federal Claims Number 01–0239V
20. Nancy Collazo Garcia on behalf of Gregory Garcia, Lindenhurst, New York, Court of Federal Claims Number 01–0241V
21. Susan Davis, Pickins, South Carolina, Court of Federal Claims Number 01–0255V
22. Paula K. Helzner on behalf of Megan Helzner, Vienna, Virginia, Court of Federal Claims Number 01–0263V
23. Stacy A. Murray on behalf of Allison Taylor Murray, Anna, Illinois, Court of Federal Claims Number 01–0265V
24. Patricia Adams on behalf of Liam Adams, Deceased, Flemington, New Jersey, Court of Federal Claims Number 01–0267V
25. Timothy Richley, Traverse City, Michigan, Court of Federal Claims Number 01–0268V
26. Sheila Alloway on behalf of Brooke Blankenship, Jefferson, Georgia, Court of Federal Claims Number 01–0273V
27. Barbara and Robert F. Page on behalf of Emily Denille Page, Dover, Ohio, Court of Federal Claims Number 01–0277V
28. Karen and John Slavinski on behalf of Ashley Slavinski, Deceased, Albuquerque, New Mexico, Court of Federal Claims Number 01–0278V
29. Jennifer and James McCloy on behalf of James C. McCloy, III, Okemos, Michigan, Court of Federal Claims Number 01–0285V
30. Tonia Gardner on behalf of Justyce Gardner, Boston, Massachusetts, Court of Federal Claims Number 01–0286V
31. Caryn and Bob Brett on behalf of Stephen Brett, Tacoma, Washington, Court of Federal Claims Number 01–0287V
32. Kathleen and Charles Pirie on behalf of Blaire N. Pirie, Shawnee Mission, Kansas, Court of Federal Claims Number 01–0288V
33. Paula Flynn on behalf of Patrick Flynn, Boston, Massachusetts, Court of Federal Claims Number 01–0297V
34. Kathy Arceneaux on behalf of Julie L. Arceneaux, Deceased, Lafayette Parish, Louisiana, Court of Federal Claims Number 01–0298V
35. Kristine and Robert Davis on behalf of Michael McKinney Davis, Riverside, California, Court of Federal Claims Number 01–0302V
36. Salvatore Formica, Boston, Massachusetts, Court of Federal Claims Number 01–0304V
37. Teresa Hager on behalf of Allison Hager, Fayette, Missouri, Court of Federal Claims Number 01–0307V
38. Eric Bisenius, Columbus, Ohio, Court of Federal Claims Number 01–0308V
39. Kenneth Mathis and Debbie Rizzuto on behalf of Brenda Mathis, St. Louis, Missouri, Court of Federal Claims Number 01–0312V
40. Suzanne C.M. Falksen, Louisville, Colorado, Court of Federal Claims Number 01–0317V
41. Nannette Heckler on behalf of Derek Heckler, Buffalo, New York, Court of Federal Claims Number 01–0319V
42. Todd Stockwell on behalf of Christian Taylor Stockwell, Huntington Beach, California, Court of Federal Claims Number 01–0330V
43. Maria Holter on behalf of Tait Leidholm, Ann Arbor, Michigan, Court of Federal Claims Number 01–0332V
44. Susan C. Irey-Green on behalf of Bailey Irey, Redlands, California, Court of Federal Claims Number 01–0333V
45. Marie and Bart Snead on behalf of Sarah Ann Snead, Lexington, Kentucky, Court of Federal Claims Number 01–0337V
46. Verna and Gilbert Castro on behalf of Joshua Bermenderfer, Las Vegas, Nevada, Court of Federal Claims Number 01–0340V
47. Nilsa Benitez, Bronx, New York, Court of Federal Claims Number 01–0341V
48. Linda Dannenberg on behalf of Benjamin Sarle, Katonah, New York, Court of Federal Claims Number 01–0352V
49. Caron and Jim Gaydon on behalf of Taylor Gaydon, Vienna, Virginia, Court of Federal Claims Number 01–0353V
50. Nicole Favaro on behalf of Kyle Favaro, New Windsor, New York, Court of Federal Claims Number 01–0354V
51. Emma Hart on behalf of Manasseh Mclea, Portland, Oregon, Court of Federal Claims Number 01–0357V
52. Robin and Thomas Stavola on behalf of Holly Stavola, Red Bank, New Jersey, Court of Federal Claims Number 01–0360V
53. Marlena and Walter Hebern on behalf of Sarah Hebern, Fresno, California, Court of Federal Claims Number 01–0361V
54. David R. Fleury, Lyons, Georgia, Court of Federal Claims Number 01–0364V
55. Robin and Steve Roller on behalf of Nicholas Gene Roller, Atoka, Oklahoma, Court of Federal Claims Number 01–0365V
56. Angela Moreno-Lanciano and Orlando F. Moreno-Santiago, Jr. on behalf of Matthew Lanciano, Winchester, Virginia, Court of Federal Claims Number 01–0368V
57. Thanh K. Cao and Tung Thanh Tran on behalf of Michelle Ashley Cao, Houston, Texas, Court of Federal Claims Number 01–0378V

Dated: July 27, 2001.

**Elizabeth M. Duke,**

*Acting Administrator.*

[FR Doc. 01–19464 Filed 8–2–01; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4644–N–31]**

## Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies, unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**EFFECTIVE DATE:** August 3, 2001.

**FOR FURTHER INFORMATION CONTACT:** Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 26, 2001.

**John D. Garrity,**

*Director, Office of Special Needs Assistance Programs.*

[FR Doc. 01–19097 Filed 8–2–01; 8:45 am]

BILLING CODE 4210–29–M

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Blackstone River Valley National Heritage Corridor Commission; Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the John H. Chafee Blackstone River Valley National Heritage Corridor Commission will be held on Friday, September 21, 2001.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 5:30 PM at the Blackstone River Theatre located at 549 Broad Street, Cumberland, RI for the following reasons:

1. Approval of Minutes
2. Chairman's Report
3. Executive Director's Report
4. Environmental Subcommittee Report
5. Approval of FY2002 Commission Budget
6. Public Input

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Michael Creasey, Executive Director, John H. Chafee. Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895; Tel.: (401) 762–0250

Further information concerning this meeting may be obtained from Michael Creasey, Executive Director of the Commission at the aforementioned address.

**Michael Creasey,**

*Executive Director BRVNHCC.*

[FR Doc. 01–19389 Filed 8–2–01; 8:45 am]

BILLING CODE 4310–RK–P

## DEPARTMENT OF THE INTERIOR

### Geological Survey

### Request for Public Comments on Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the USGS Clearance Officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. Comments and suggestions on the requirement should be made directly to the Desk Officer for the Interior Department, Office of Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to the USGS Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the USGS, including whether the information will have practical utility;
2. The accuracy of the USGS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The utility, quality, and clarity of the information to be collected; and,
4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

*Title:* Consolidated Consumer's Report.

*Current OMB approval number:* 1028–0070.

*Abstract:* Respondents supply the U.S. Geological Survey with domestic consumption data of 12 metals and ferroalloys, some of which are considered strategic and critical. This information will be published as Annual Reports, Mineral Industry Surveys, and in Mineral Commodity Summaries for use by Government agencies, industry, and the general public.

*Bureau form number:* 9–4117–MA.

*Frequency:* Monthly and Annual.

*Description of respondents:* Consumers of ferrous and related metals.

*Annual Response:* 3,670.

*Annual burden hours:* 2,753.

*Bureau clearance officer:* John E. Cordyack, Jr., 703–648–7313.

Dated: July 27, 2001.

**Kenneth W. Mlynarski,**

*Acting Chief Scientist, Minerals Information Team.*

[FR Doc. 01–19363 Filed 8–2–01; 8:45 am]

BILLING CODE 4310–47–M

## DEPARTMENT OF THE INTERIOR

### Geological Survey

### Request for Public Comments on Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the

USGS Clearance Officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. Comments and suggestions on the requirement should be made directly to the Desk Officer for the Interior Department, Office of Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to the USGS Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the USGS, including whether the information will have practical utility;

2. The accuracy of the USGS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The utility, quality, and clarity of the information to be collected; and,

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

*Title:* Ferrous Metals Surveys.

*Current OMB approval number:* 1028–0068.

*Abstract:* Respondents supply the U.S. Geological Survey with domestic production and consumption data on ferrous and related metals. This information will be published as monthly and annual reports for use by Government agencies, industry, and the general public.

*Bureau form number:* Various (17 forms).

*Frequency:* Monthly and Annual.

*Description of respondents:* Producers and Consumers of ferrous and related metals.

*Annual Responses:* 3,479.

*Annual burden hours:* 1,970.

*Bureau clearance officer:* John E. Cordyack, Jr., 703–648–7313.

Dated: May 24, 2001.

**K.W. Mlynarksi,**

*Acting Chief Scientist, Minerals Information Team.*

[FR Doc. 01–19364 Filed 8–2–01; 8:45 am]

**BILLING CODE 4310–Y7–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Proposed Finding Against Federal Acknowledgment of the Ohlone/Costanoan Muwekma Tribe

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of proposed finding.

**SUMMARY:** Pursuant to 25 CFR 83.10(h), notice is hereby given that the Assistant Secretary—Indian Affairs proposes to decline to acknowledge that the Ohlone/Costanoan Muwekma Tribe, 1358 Ridder Park Dr., San Jose, CA 95131, exists as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the petitioner does not satisfy all seven of the criteria set forth in 25 CFR 83.7, specifically criteria 83.7(a), (b), and (c), and therefore does not meet the requirements for a government-to-government relationship with the United States.

**DATES:** As provided by 25 CFR 83.10(i), any individual or organization wishing to comment on the proposed finding may submit arguments and evidence to support or rebut the proposed finding. Such material must be submitted no later than October 29, 2001, in accordance with an order of the United States District Court for the District of Columbia, dated January 16, 2001, which supersedes and shortens the time periods specified in the acknowledgment regulations. As stated in the regulations, 25 CFR 83.10(i), interested and informed parties who submit arguments and evidence to the Assistant Secretary must also provide copies of their submissions to the petitioner. The names and addresses of commenters on the proposed finding will be available for public review. Commenters wishing to have their name and/or address withheld must state this request prominently at the beginning of their comments. Such a request will be honored to the extent allowable by law.

**ADDRESSES:** Comments on the proposed finding or requests for a copy of the report which summarizes the evidence, reasoning, and analyses that are the basis for this proposed finding should be addressed to the Bureau of Indian Affairs, Branch of Acknowledgment and Research, 1849 C Street NW, Mailstop 4660–MIB, Washington, D.C. 20240.

**FOR FURTHER INFORMATION CONTACT:** R. Lee Fleming, Chief, Branch of Acknowledgment and Research, (202) 208–3592.

**SUPPLEMENTARY INFORMATION:** This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The Muwekma petitioner has its headquarters in San Jose, California. It has demonstrated a genealogical connection of many of its 400 members to the residents of two historical Indian settlements, or rancherias, in Alameda County east of San Francisco Bay. The most prominent Indian settlement, which existed until about 1915, was located near a railroad station named Verona in a canyon just southwest of the town of Pleasanton. Another Indian settlement in the vicinity was located near the town of Niles. The petitioner also claims to descend from Indians concentrated by the Spaniards at Mission San Jose, but it has not been necessary to evaluate that historical claim.

The Bureau of Indian Affairs (BIA) received a letter of intent to petition for Federal acknowledgment from a group called the Ohlone/Costanoan Muwekma Tribe on May 9, 1989. The BIA determined that the petitioner had submitted a completed documented petition on March 26, 1998. After that time, the petitioner submitted additional exhibits and analysis. The petitioner obtained an order from the United States District Court for the District of Columbia which directed that its petition be placed on ''active consideration'' by February 12, 2001, and that the Department issue a proposed finding on its case by July 30, 2001.

The BIA made a preliminary determination in 1996 that the petitioning group had previous Federal acknowledgment from 1914 until 1927 as the Verona band of Alameda County. Therefore, this proposed finding has evaluated the petitioner's continuous existence as a tribe since 1927 under section 83.8 of the regulations, which modifies three of the seven mandatory criteria for groups that have previous Federal acknowledgment.

The petitioner does not meet criterion 83.7(a) as modified by section 83.8(d)(1) which requires that the petitioning group has been identified as an Indian entity on a substantially continuous basis, and that it has been identified as the same tribal entity that was previously acknowledged. Section 83.8(d)(5) provides that the petitioner may demonstrate alternatively that it meets the unmodified requirements of criterion 83.7(a) from the date of last Federal acknowledgment until the present. From 1927, when a ''Verona band'' of Alameda County was last identified by an official of the Indian Office, until 1985, when a ''Muwekma

Ohlone'' group in San Jose was first identified by local newspapers, a period of more than half a century, there is no sufficient evidence in the record for this case of the identification of the petitioning group as an Indian entity. The petitioner does not meet the unmodified requirements of criterion 83.7(a) because it was not identified by external observers as an Indian entity ''on a substantially continuous basis.''

The petitioner does not meet criterion 83.7(b) as modified by § 83.8(d)(2) which requires the petitioner to demonstrate that it comprises a distinct community at present, but not to demonstrate its existence as a community historically. The available evidence indicates that prior to the mid-1990's participation in the petitioner's activities was predominantly by members of two extended families with descent from one common ancestor. Significant portions of the evidence submitted for 1984–1992 by the petitioner show the activities of an archaeology monitoring firm, which may be a family-run firm. A relationship between this firm and the petitioning group was not demonstrated. The petitioner's activities do not involve many areas of members' lives and are often symbolic representations of heritage directed at the general public, rather than examples of significant social interaction between members. Members engage in activities with other members at a low level of participation, and the interaction which occurs repeatedly involves the same small group of close kin. The petitioner submitted a survey concerning godparenting, marriage, information sharing, and other social activities. Few families were represented by the survey, to which approximately 10 percent of members responded. The demonstrated activities and interactions of the respondents were limited to their own families. These activities do not incorporate the various extended families and the membership as a whole in a community. The petitioner does not meet the requirements of criterion 83.7(b), as modified, because the evidence in the record is not sufficient to demonstrate that the petitioner's members comprise ''a distinct community at present.''

The petitioner does not meet criterion 83.7(c) as modified by § 83.8(d)(3) which provides that this criterion can be met, in part, for the period between 1927 and the present by the ''identification, by authoritative, knowledgeable'' sources, of named leaders or a governing body which exercised political influence or authority within the group. The evidence available does not include any such identifications between 1900 and 1989. Under the provisions of 83.8(d)(5), the petitioner therefore must demonstrate alternatively that it meets the unmodified requirements of criterion 83.7(c) since last Federal acknowledgment. The evidence available shows that the few sporadic actions that were documented between 1927 and the 1990's were taken by individuals on behalf of close family members, rather than on behalf of a larger entity. During the 1990's the petitioner's organization was run by a small group of individuals, with an absence of evidence of broad participation by members or any indication that members found the organization's activities significant to them. Therefore, the evidence in the record is not sufficient to demonstrate that the petitioner has maintained ''political influence or authority over its members'' at any time since 1927.

The petitioner meets the requirements of criterion 83.7(e) based upon an assumption, the validity of which should be addressed during the comment period. In the absence of a membership roll of the Verona band between 1914 and 1927, a proxy or substitute for such a roll has been created from residential censuses of Alameda County which appear to have included the Indian rancheria near Pleasanton: The 1905–1906 census of Special Indian Agent C.E. Kelsey and the 1910 Federal census of ''Indian town'' on the Indian population schedule. All of the petitioner's members descend either from an individual listed on the Kelsey census of Pleasanton and Niles in 1905–1906 or the Federal census of ''Indian town'' in 1910, or from an unlisted sibling of such an individual.

Specifically, this proposed finding assumes that descent from children of Avelina (Cornates) Marine who were not listed on that 1910 Indian schedule is descent from the historical Verona band because they are siblings of two of her other children who were listed on that Indian schedule. The majority of the petitioner's members claim descent from the Verona band through the unlisted siblings, and thus the petitioner meets this criterion because of this assumption. This Department previously has listed the Marine siblings as Indians on its 1933 census of the Indians of California, so this proposed finding accepts their Indian descent, but assumes their descent from a specific band. It may be assumed that the siblings not listed on the 1910 Indian schedule were part of the historical Verona band on the basis of their close kinship to a listed resident of the Indian settlement. In addition, the recollections in the 1960's of a son of Avelina (Cornates) Marine say that she was raised in the household of the chief of an Indian rancheria in Alameda County. Her presence in that household or at the rancheria, however, is not confirmed by other evidence in the record. That son in 1910 resided in ''Indian town'' in the household of the woman he claimed had raised his mother, giving some credence to a continuing association of the Marine family with the rancheria. The recollections in the 1960's of a daughter of Marine suggested that some of the Marine children had visited the Indians at the rancheria during their youth. Another daughter was living within several miles of the rancheria in 1910. It is reasonable to assume that the Marine siblings not on the Indian census of 1910 had a social connection to residents of that Indian settlement. It would not be necessary to make this assumption if additional evidence were presented during the comment period to show the actual participation as members of the band by Avelina (Cornates) Marine and her children. With additional analysis or new evidence, however, the final determination may find that this assumption is not correct.

The petitioner meets the requirements of criterion 83.7(d) because it has submitted a governing document, criterion 83.7(f) because its members are not enrolled with federally recognized tribes, and criterion 83.7(g) because the group or its members have not been terminated by congressional legislation.

The evidence available for this proposed finding demonstrates that the Ohlone/Costanoan Muwekma Tribe petitioner does not meet all seven criteria required for Federal acknowledgment. In accordance with the regulations (83.6(c)), failure to meet any one of the seven criteria requires a determination that the group does not exist as an Indian tribe within the meaning of Federal law.

A report summarizing the evidence, reasoning, and analyses that are the basis for the proposed decision will be provided to the petitioner and interested parties, and is available to other parties upon written request (83.10(h)).

During the comment period, the Assistant Secretary shall provide technical advice concerning the proposed finding and shall make available to the petitioner in a timely fashion any records used for the proposed finding not already held by the petitioner, to the extent allowable by Federal law (83.10(j)(1)). In addition, the Assistant Secretary shall, if requested by

the petitioner or any interested party, hold a formal meeting during the comment period for the purpose of inquiring into the reasoning, analyses, and factual bases for the proposed finding. The proceedings of this meeting shall be on the record. The meeting record shall be available to any participating party and will become part of the record considered by the Assistant Secretary in reaching a final determination (83.10(j)(2)).

According to the order of the United States District Court, the petitioner shall have until December 27, 2001, to respond to any comments received from a third party during the comment period.

After consideration of the written arguments and evidence submitted during the comment period and the petitioner's response to the comments, the Assistant Secretary shall make a final determination regarding the petitioner's status. The United States District Court has ordered that this final determination be issued by March 11, 2002. A summary of the final determination will be published in the **Federal Register** (83.10(l)(2)).

Dated: July 30, 2001.

**Neal A. McCaleb,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 01–19529 Filed 8–2–01; 8:45 am]

**BILLING CODE 4310–02–P**

---

## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

## Tuolumne Rancheria Alcoholic Beverage Control Ordinance

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice publishes the Tuolumne Rancheria Alcoholic Beverage Control Ordinance. The Ordinance regulates the control, possession, and sale of liquor on the Tuolumne Rancheria trust lands, in conformity with the laws of the State of California, where applicable and necessary. Although the Ordinance was adopted on November 2, 2000, it does not become effective until published in the **Federal Register** because the failure to comply with the ordinance may result in criminal charges.

**DATES:** This Ordinance is effective on August 3, 2001.

**FOR FURTHER INFORMATION CONTACT:** Kaye Armstrong, Office of Tribal Services, 1849 C Street, NW., MS 4631–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transaction in Indian country. The Tuolumne Rancheria Alcoholic Beverage Control Ordinance, No. 00–02, was duly adopted by the Tuolomne Rancheria Tribal Council on November 2, 2000. The Tuolomne Rancheria, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenues to combat alcohol abuse and its debilitating effects among individuals and family members within the Tuolumne Rancheria.

This notice is being published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

I certify that Ordinance No. 00–02, the Tuolumne Rancheria Alcoholic Beverage Control Ordinance, was duly adopted by the Tuolumne Rancheria Tribal Council on November 2, 2000.

Dated: July 10, 2001.

**Neal A. McCaleb,**

*Assistant Secretary—Indian Affairs.*

The Tuolumne Rancheria Alcoholic Beverage Control Ordinance, No. 00–02, reads as follows:

### Alcoholic Beverage Control Ordinance

*Article I—Findings and Policy.*

The Tribe finds that:

1. Under the inherent sovereignty of the Tribe, this Ordinance shall be deemed an exercise of the Tribe's power for the protection of the welfare, health, peace, morals and safety of the members of the Tribe.

2. The introduction, possession, and sale of alcoholic beverages on the Tribe's lands are matters of special concern to the Tribe.

3. The Tribe's policy is to assure that any possession, importation, sale, or consumption of an alcoholic beverage within the Tribe's jurisdiction, shall occur under the regulation and control of the Tribe as set forth in this Ordinance.

4. This Ordinance shall be construed to comply with federal and tribal laws and with applicable state laws.

*Article II—Definitions.*

The stated terms are defined as follows unless a different meaning is expressly provided or the context clearly indicates otherwise:

1. *Alcoholic Beverage.* Alcoholic Beverage shall include alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, and which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances. mean any intoxicating liquor, beer or any wine, as defined under the provisions of this Ordinance or other applicable law. It shall be interchangeable in this Ordinance with the term liquor.

2. *Applicable Law.* Applicable Law or laws include federal law, tribal law, and laws of the State of California regarding the possession, sale, use, distribution and control of alcoholic beverages.

3. *Community Council.* Community Council shall mean the Community Council of the Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California, which includes all eligible voters and is its governing body.

4. *Legal Age.* Legal Age shall mean the same as the age requirements of the State of California, which is currently 21 years. If the drinking age for the State of California is repealed or amended to raise or lower the legal age for drinking within California, the Community Council is authorized to amend this Article to match the age limit imposed by applicable state law.

5. *Person.* Person shall mean any individual, firm, partnership, joint venture, association, corporation, trust, or any other group of combination acting as a unit.

6. *Sale.* Sale shall mean the exchange of property and/or any transfer of ownership of, title to, or possession of property for a valuable consideration, exchange or barter, in any manner or by any means whatsoever. Sale includes optional sales contracts, leases with options to purchase and other contracts under which possession of property is given to purchaser, buyer, or consumer but title is retained as security for the payment of the purchase price, and includes any transaction whereby, or any consideration, title to alcoholic beverages is transferred from one person to another.

*Article III—General Prohibition.*

It shall be a violation of tribal law for any person on those lands under the jurisdiction and control of the Tribe to manufacture for sale, to sell, offer or keep for sale, possess, transport, or conduct any transaction involving any alcoholic beverage except in compliance with the terms, conditions, limitations,

and restrictions specified in this Ordinance.

*Article IV—Powers of Enforcement.*

The Tribe, through the Community Council or its duly authorized representatives, in respect to the enforcement of this Ordinance, shall have the power and duty to:

1. Develop, approve, publish, enforce and interpret such rules and regulations as may be necessary for enforcement of this Ordinance regarding the sale, manufacture, and distribution of alcoholic beverages on all lands over which the Tribe has jurisdiction;

2. Employ managers, accountants, security personnel, attorneys, inspectors, and such other persons as shall be reasonably necessary to allow the Community Council to perform its functions;

3. Issue licenses permitting the sale or manufacture or distribution of alcohol on the lands over which the Tribe has jurisdiction;

4. Hold hearings on violations of this Ordinance, as well as hearings for the issuance, denial, suspension, or revocation of licenses hereunder. Notice and the opportunity to be heard will be provided by the Tribe in such cases;

5. Bring suit in the appropriate court of competent jurisdiction to enforce this Ordinance as necessary;

6. Establish, determine, and levy fines and seek damages for violation of this Ordinance;

7. Collect taxes and fees levied or set by the Community Council and to keep records, books, and accounts; and

8. Confiscate liquor sold, possessed or introduced in violation of this Ordinance and to sell or otherwise dispose of such confiscated liquor for the benefit of the Tribe.

*Article V—Right to Inspect and Search.*

The premises on which alcoholic beverages are sold or distributed shall be open for inspection by the Tribe, through the Community Council or its duly authorized representatives, at all reasonable times for the purpose of ascertaining compliance with the provisions and requirements of this Ordinance. Where warranted, the Tribe shall conduct reasonable searches and may seize goods.

*Article VI—Sales and Possession of Alcohol.*

The sale and possession of alcohol on tribal lands shall be governed by the following:

1. The possession or introduction of alcoholic beverages within the exterior boundaries of the Tribe's Rancheria or on other Indian Lands of the Tribe shall be lawful if such possession or introduction is in conformity with Applicable Laws.

2. The sale of alcoholic beverages by business entities owned by and subject to the control of the Tribe shall be lawful; provided that such sales are in conformity with Applicable Laws.

3. The Tribe is authorized to sell alcoholic beverages by the drink at special events if such sale is authorized by the Tribe, provided that such sales are in conformity with Applicable Laws.

4. The sale of alcoholic beverages shall be for the personal use and consumption of the purchaser, and the resale of alcoholic beverages is prohibited unless such person or entity is licensed to do so pursuant to this Ordinance and such resale is authorized under tribal and other Applicable Laws.

*Article VII—Licensing and Enforcement.*

No tribal license shall issue under this Ordinance except upon a sworn application filed with the Tribe containing full and complete information including but not limited to the following:

1. A completed application form containing the name and address of the applicant, and including all principal officers, directors, and stockholders holding a 10% or greater interest in the corporation, and each partner in a partnership.

2. Information regarding other licenses applied for or held, a statement that applicant has not been convicted of a felony or violated applicable alcoholic beverage laws, and the notarized signature of applicant. The Tribe may request other information, including fingerprints, as part of the licensing process, and a licensing and investigation fee.

3. All applicants must provide specific information regarding the location(s) where applicant proposes to do business, as well as the type of liquor transaction for which application is made (for example, a retail license authorizing applicant to sell alcoholic beverages at retail to be consumed off the premises; or a retail license authorizing the applicant to sell only beer and wine at retail to be consumed only on the premises).

4. Any license granted must be renewed at least every two years, and can be transferred only with the written consent of the Tribe.

5. The Tribe may revoke, suspend, or deny a license at any time, based on violation, misrepresentation, failure to renew in a timely manner, failure to provide information requested by the Tribe, and other good cause shown. Applicants or licensees whose licenses are denied, suspended, or revoked may request a hearing before the Tribe.

6. Any person determined by the Tribe to be in violation of the Ordinance shall be subject to civil fines and penalties, based on a schedule of fines applicable to such violations. Penalties may include the imposition of criminal sanctions and penalties, as warranted, consistent with all applicable law.

7. In investigating applicants, the Tribe shall consider whether the applicant is in compliance with all Applicable Laws, and whether such licensing will serve the best interests of the Tribe. All applicants must prove their suitability to obtain a tribal license and to qualify for a state liquor license.

8. Applicant has the burden of providing satisfactory proof that applicant is of good character, has a good reputation in the tribal and local community, and that applicant is financially responsible and meets all other licensing standards established by the Tribe.

9. The Tribe is authorized hereunder to promulgate regulations and procedures consistent with the licensing requirements established in this Ordinance.

*Article VIII—Licensing Hearings.*

All applications for a tribal liquor license shall be reviewed and considered by the Tribe, and the Tribe may convene a hearing to take evidence regarding the application. The Community Council shall determine whether to grant or deny the application based on the following criteria:

1. Whether all suitability requirements have been met;

2. Whether all requirements of this Ordinance have been addressed; and

3. Whether the Community Council, in its discretion, determines that granting the license is in the best interests of the Tribe.

In the event an applicant is a member of the Community Council, the member shall not vote on the application or participate in the hearings as a Community Council member.

*Article IX—Conditions of the Tribal License.*

Any tribal license issued under this title shall be subject to such conditions as the Community Council shall establish, including but not limited to the following:

1. The license shall be for a term not to exceed 2 years.

2. The licensee shall at all times maintain an orderly, clean establishment, both inside and outside the licensed premises.

3. The licensed premises shall be subject to patrol and inspection by duly authorized tribal enforcement or other tribal officials or their designee, and by

such other law enforcement officials as may be authorized by law at all times during regular business hours, and after hours as deemed necessary and prudent by such officials.

4. No alcoholic beverages shall be sold, served, disposed of, delivered or consumed on the licensed premises except in conformity with the hours and days prescribed by the Community Council and by the laws of the State of California to the extent applicable.

5. A tribal liquor license shall not be deemed a property right or vested right of any kind, nor shall the granting of a tribal liquor license give rise to a presumption of legal entitlement to the granting of such license for a subsequent time period.

*Article X—Tribally-Owned Establishments*

The Tribe's Community Council may issue, by resolution, an appropriate license to a tribally-owned establishment upon such determination as is necessary to assure compliance with applicable laws.

*Article XI—Sovereign Immunity.*

Nothing contained in this Ordinance is intended to, nor does it in any way limit, alter, restrict, or waive the sovereign immunity of the Tribe or any of its agencies from unconsented suit or other such action of any kind.

*Article XII—Severability, Prior Enactments, Amendment, Compliance with Law, & Effective Date.*

1. If any provision or application of this ordinance is determined by an agency or court of competent jurisdiction to be invalid or unenforceable, the remaining portions of this Ordinance shall remain and be unaffected thereby.

2. All prior tribal laws, ordinances, or resolutions which are or may be determined to be inconsistent with the provisions of this Ordinance are hereby repealed to the extent inconsistent with this Ordinance.

3. This Ordinance may be amended by majority vote of the Community Council at any time at a duly noticed meeting. Any such amendment shall become effective upon publication by the Secretary of the Interior in the **Federal Register**, unless applicable law does not require such publication for the amendment to become effective.

4. All provisions of this Ordinance shall comply with 18 U.S.C. 1161.

5. This Ordinance shall be effective on such date as the Secretary of the Interior certifies this Ordinance and publishes the same in the **Federal Register**.

[FR Doc. 01–19404 Filed 8–2–01; 8:45 am]

BILLING CODE 4310–02–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[NV–040–1430–EU–040F]**

## Notice of Realty Action: Competitive/ Modified Competitive Sale of Public Lands

**AGENCY:** Bureau of Land Management.

**ACTION:** Competitive/Modified Competitive Sale of Public Lands in Lincoln County, Nevada.

**SUMMARY:** The below listed public land in Lincoln County, Nevada has been designated for disposal under Public Law 106–298, the Lincoln County Land Act of 2000. It will be sold competitive/ modified competitive in accordance with Section 203 and Section 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713, 1719, and 1740) (FLPMA) at not less than fair market value (FMV).

**DATES:** On or before September 17, 2001, interested parties may submit comments to the Assistant Field Manager, Ely Field Office.

**ADDRESSES:** Written comments should be addressed to: Bureau of Land Management, Jeffrey A. Weeks, Assistant Field Manager, HC 33 Box 33500, Ely, Nevada 89301–9408.

**FOR FURTHER INFORMATION CONTACT:** Detailed information concerning the sale, including the reservations, sale procedures and conditions, planning and environmental documents, are available at the Ely Field Office of the Bureau of Land Management, at 702 North Industrial Way, Ely, Nevada 89301, or by calling Kevin Finn at (775) 289–1849. In addition, information may be obtained by calling the General Services Office in San Francisco at (415) 522–3428 or by e-mail to *karen.hoover@gsa.gov.* Some, but not all information, will be available on the Internet at *http://www.nv.blm.gov.*

**SUPPLEMENTARY INFORMATION:** The following described parcels of land situated in Lincoln County, Nevada are being offered as a competitive/modified competitive sale.

**Mount Diablo Meridian, Nevada**

PARCEL 1 N–74934 located at:
T. 12 S., R. 71 E., sec. 33, lots 1,3,
T. 12 S., R. 71 E., sec. 34, lot 8.
Containing 112.22 acres more or less.
PARCEL 2 N–74587 located at:
T. 12 S., R. 71 E., sec. 33, lots 2, 4, 5,
T. 12 S., R. 71 E., sec. 34, lot 9.
Containing 14.59 acres more or less.

The above legal descriptions are subject to minor adjustments upon final approval of the official plats of survey, which will also provide a new legal description for these land parcels. If the land is sold, conveyance of the locatable mineral interests being offered have no known mineral value. Acceptance of a sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 non-refundable filing fee in conjunction with the final payment for processing of the conveyance of the locatable mineral interests. The terms and conditions applicable to the sale are as follows:

1. All leaseable and saleable mineral deposits are reserved on land sold; permittees, licenses, and licensees, and lessees, retain the right to prospect for, mine, and remove the minerals owned by the United States under applicable law and any regulations that the Secretary of the Interior may prescribe, including all necessary access and exit rights.

2. A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

3. All land parcels are subject to all valid and existing rights. Encumbrances of record are available for review during business hours, 7:30 to 4:30 p.m., Monday through Friday, at the Bureau of Land Management, Ely Field Office, 702 North Industrial Way, Ely, Nevada.

4. The parcels are subject to reservations for roads, public utilities and flood control purposes, both existing and proposed, in accordance with the local governing entities' Transportation Plans.

5. The high bidder will be required to sign a Development Agreement and Reconveyance Agreement within 30 days of the oral auction. The Development Agreement is to assure organized and planned development, and to assure a Master Plan submission to Lincoln County by the high bidder within 6 months of the auction. The Reconveyance Agreement is for the purpose of assuring compliance with the need for roads, school sites, and other public facilities. The Reconveyance Agreement will require at least 23% of the total acreage within the parcel to be transferred to Lincoln County for public purposes.

6. All purchasers/patentees, by accepting a patent, agree to indemnify, defend, and hold harmless the United States from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgements of any kind or nature arising from the past, present, and future acts or omissions of the patentee or their employees, agents, contractors, or lessees, or any third party, arising out of, or in connection

with, the patentee's use, occupancy, or operations of the patented real property. The indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violation of federal, state, and local laws and regulations that are now, or may in the future become, applicable to the real property: (2) Judgements, claims or demands of any kind assessed against the United States: (3) Costs, expenses, or damages of any kind incurred by the United States: (4) or threatened releases of solid or hazardous waste(s) and/or hazardous substance(s), as defined by federal or state environmental laws; off, on, into or under land, property and other interests of the United States; (5) Other activities by which solids or hazardous substances or wastes, as defined by federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resources damages as defined by federal and state law. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

The appraisal report for the parcels will be available for public review at the BLM's Ely Field office on or before August 10, 2001. Bids at the oral auction must be for not less than appraised fair market value (FMV).

The parcels will be offered for competitive/modified competitive sale by oral auction beginning at 10:00 a.m. PDT, September 18, 2001, at the Mesquite City Hall, 10 East Mesquite Blvd., Mesquite, Nevada. Registration for oral bidding will begin at 8:00 a.m. the day of sale and will continue throughout the auction. All bidders are required to register.

The highest qualifying bid for parcel 1 (N–74934) will be declared the high bid. The apparent high bidder must submit the required bid deposit immediately following the close of the sale in the form of cash, personal check, bank draft, cashiers check, money order, or any combination thereof, made payable to the Bureau of Land Management, for not less than 20 percent of the amount bid.

The remainder of the full bid price must be paid within 180 calendar days of the date of sale. Failure to pay the full price within the 180 days will disqualify the apparent high bidder and cause the bid deposit to be forfeited to the BLM.

Parcel number 2 (N–74587) will be offered for sale under Modified Competitive procedures at no less than estimated fair market value (FMV) or at the cost per acre established by the oral auction of parcel 1 (N–74934), whichever is greater. Parcel number 2 (N–74587) will be sold under these procedures in order to resolve a trespass. The party in trespass may purchase the trespass parcel based upon the above procedure. If the trespass party purchases parcel 2 under the above procedures, the full sale price will be immediately due the day of sale. Federal law requires that bidders must be U.S. citizens 18 years of age or older, a corporation subject to the laws of any State or of the United States; a State, State instrumentality, or political subdivision authorized to hold property; or an entity, including but not limited to associations or partnerships, capable of holding property or interests therein under the law of the State of Nevada. Certification of qualification, including citizenship or corporation or partnership, must accompany the bid deposit. In order to determine the fair market value of the subject public lands through appraisal, certain assumptions have been made on the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this notice, the Bureau of Land Management gives notice that these assumptions may not be endorsed or approved by units of local government. Furthermore, no warranty of any kind shall be given or implied by the United States as to the potential uses of the lands offered for sale; conveyance of the subject lands will not be on a contingency basis. It is the buyers' responsibility to be aware of all applicable local government policies and regulations that would affect the subject lands. It is also the buyer's responsibility to be aware of existing and potential uses for nearby properties. When conveyed out of federal ownership, the lands will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals would be the responsibility of the buyer. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer. For a period of 45 days from the date of publication of this notice in the **Federal Register**, the general public and interested parties may submit comments to Jeffrey A. Weeks, Assistant Field Manager, Ely Field Office, HC 33 Box 33500, Ely, Nevada 89301–9408. Any adverse comments will be reviewed by the Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, communication of the sale would be fully consistent with FLPMA or other applicable laws or is determined not in the public interest. Any comments received during this process, as well as the commentor's name and address, will be available to the public in the administrative record and/or pursuant to the Freedom of Information Act request. You may indicate for the record that you do not wish your name and/or address made available to the public. Any determination by the Bureau of Land Management to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. A commentor's request to have their name and/or address withheld from public release will be honored to the extent permissible by law.

Lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Dated: July 9, 2001.

**Jeffrey A. Weeks,**

*Assistant Field Manager, Nonrenewable Resources.*

[FR Doc. 01–19499 Filed 8–2–01; 8:45 am]

BILLING CODE 4310–HC–P

---

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AZ 070–00–1610–DG–241E–082A]**

### Notice of Intent To Prepare a Resource Management Plan for the BLM Lake Havasu Field Office

**AGENCY:** United States Department of the Interior, Bureau of Land Management, Lake Havasu Field Office, Lake Havasu City, Arizona.

**ACTION:** Notice of Intent to prepare a Resource Management Plan, with an Environmental Impact Statement, for portions of Mohave, La Paz, Yavapai, and Maricopa Counties, Arizona; and

portions of San Bernardino County, California.

**SUMMARY:** This document provides notice that the Bureau of Land Management (BLM) intends to prepare a Resource Management Plan (RMP) with an associated Environmental Impact Statement for the Lake Havasu Field Office. This field office is currently managing the resources under portions of four different Land Use Plans (LUP): Yuma District RMP 1985, Kingman RMP 1995, Lower Gila North Management Framework Plan (MFP) 1983, and Lower Gila South RMP 1988. The proposed plan will meet the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies. This notice initiates the public scoping process to examine proposed issues and planning criteria.

**SUPPLEMENTARY INFORMATION:** The modification of the Lake Havasu Field Office boundaries has necessitated creation of the Lake Havasu RMP. Currently the office is managing resources under four different Land Use Plans (LUP): Yuma District RMP 1985, Kingman RMP 1995, Lower Gila North MFP 1983, and the Lower Gila South RMP 1988. The proposal is to revise and update the previous plans and combine them into one RMP for the Lake Havasu Field Office. This action requires an EIS level analysis, followed by an approved RMP and Record of Decision (ROD). Public meetings will be held throughout the plan scoping and preparation period. Meetings will be held in the communities of Parker, Lake Havasu City, and Bullhead City, Arizona, to ensure local participation and input. At least 15 days public notice will be given for meetings/activities where the public is invited to attend. Written comments will also be accepted throughout the planning process at the address below. Meetings and comment deadlines will be announced through the mailings, local news media, and the BLM web site (*www.az.blm.gov*). Additional public participation and input will be provided through comment on the alternatives and the BLM Draft RMP/ Draft EIS. Documents pertinent to this proposal may be examined at the Lake Havasu Field Office located in Lake Havasu City, Arizona or via the BLM web site. Early participation by all those interested is encouraged and will help determine the future management of the Lake Havasu Resource Management Area.

Preliminary issues and management concerns have been received internally from BLM personnel, other agencies, tribes and at meetings with individuals and user groups. This input represents the BLM understanding to date on issues and concerns with current management practices. Major issues to be addressed in the plan include, but are not limited to: 1) Protection of natural and cultural resources; 2) Management of public activities and uses; 3) Consistency with other agencies and community plans; 4) Facilities and infrastructures to provide visitor services and administration; 5) Transportation and access management.

After gathering public comments on what issues the plan should address, the suggested issues will be placed in one of three categories:

1. Issues to be resolved in the plan
2. Issues resolved through policy or administrative action.
3. Issues beyond the scope of this plan.

Rationale will be provided for each issue in Category 2 or 3. In addition to the preceding major issues, questions and concerns to be addressed include: ecosystem health, riparian condition, threatened and endangered species habitat, wildlife habitat, biodiversity, reintroduction of native species, wilderness values and management, cultural resource protection and interpretation, recreation/visitor use, rangeland management, and minerals management. The following disciplines will be represented on the BLM planning team: recreation, wildlife, range management, fire ecology, wilderness, geology, realty, cultural resources, soils, hydrology, Geographic Information Systems (GIS), and engineering.

**Background Information**

The plan will address and incorporate BLM policies, regulations and management directives. The BLM Lake Havasu Field Office manages approximately 1.3 million acres of Public Land in Arizona and California. The mission statement is: ''Provide quality outdoor recreation opportunities and meet community expansion demands along the Colorado River, managing resources wisely. Foster responsible stewardship of the Public Lands through resource protection, public outreach and education.'' The BLM intends to conduct formal scoping until January 31, 2002, to formulate alternative management strategies. During the winter of 2002, the team will hold field discussions and public meetings on each management alternative. The Draft RMP/Draft EIS will be issued for public comment by January 2003. The proposed RMP and Final EIS will be published by September of 2003, the approved RMP and ROD will be published by December 2003.

**Comments**

Comments, including names and street addresses of respondents, will be available for public review at the address below during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

**ADDRESSES:** For further information, future mailings, and to register comments, contact Catherine L. Wolff-White, Planning and Environmental Coordinator, Bureau of Land Management Lake Havasu Field Office, 2610 Sweetwater Drive, Lake Havasu City, AZ 86406. Phone: 928–505–1309, Fax 520–505–1208.

Dated: July 9, 2001.

**Donald Ellsworth,**

*Field Manager.*

[FR Doc. 01–19500 Filed 8–2–01; 8:45 am]

BILLING CODE 4310–32–P

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Notice and Agenda for Meeting of the Royalty Policy Committee of the Minerals Management Advisory Board

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The Secretary of the Interior established a Royalty Policy Committee on the Minerals Management Advisory Board to provide advice on the Department's management of Federal and Indian minerals leases, revenues, and other minerals-related policies. Committee membership includes representatives from States, Indian tribes, allottee organizations, minerals industry associations, the general public, and Federal departments. At this thirteenth meeting, the committee will again consider minority and majority reports on sodium/potassium draft

valuation regulations. The Coal and Accounting Relief for Marginal Properties Subcommittees will also present reports. A discussion will be held on the appeals process. MMS will present reports on coal waste piles, program reengineering, RIK operations, and the Wyoming and Texas Section 8g royalty-in-kind pilot evaluations. Panels comprised of MMS and guest presenters will discuss topical energy issues such as proposed energy bills and the Administration's National Energy Policy, and the status of MMS's new financial management system.

**DATES:** The meeting will be held on Tuesday, September 18, 2001, 8:30 a.m. to 5 p.m. Mountain Standard time.

**ADDRESSES:** The meeting will be held at the Sheraton Denver West Hotel, 360 Union Boulevard, Lakewood, Colorado, telephone number (303) 987–2000 or (720) 963–2018.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gary Fields, Royalty Policy Committee Coordinator, Minerals Revenue Management, Minerals Management Service, P.O. Box 25165, MS 300B3, Denver, CO 80225–0165, telephone number (303) 231–3102, fax number (303) 231–3780, email gary.fields@mms.gov.

**SUPPLEMENTARY INFORMATION:** The location and dates of future meetings will be published in the **Federal Register** and posted on the Internet at www.mrm.mms.gov/Laws_R_D/RoyPC/RoyPC.htm. The meetings will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meetings, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to Mr. Fields at the email or mailing address listed in the **FOR FURTHER INFORMATION CONTACT** section. Transcripts of committee meetings will be available 2 weeks after each meeting for public inspection and copying at MMS, Building 85, Denver Federal Center, Denver, Colorado. Meeting minutes will be posted on the Internet at www.mrm.mms.gov/Laws_R_D/RoyPC/RoyPC.htm approximately 1 month after the meeting. These meetings are being held under the authority of the Federal Advisory Committee Act, Public Law 92–463, 5 U.S.C. Appendix 1, and Office of Management and Budget Circular No. A–63, revised.

Dated: July 20, 2001.

**Lucy Querques Denett,**

*Associate Director for Minerals Revenue Management.*

[FR Doc. 01–19425 Filed 8–2–01; 8:45 am]

**BILLING CODE 4310–MR–P**

---

## DEPARTMENT OF THE INTERIOR

## Bureau of Reclamation

## Pajaro Valley Water Management Agency Basin Management Plan Update Project, Santa Cruz and Monterey Counties, CA

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of Intent to prepare an environmental impact statement (EIS).

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA), the Bureau of Reclamation (Reclamation) proposes to prepare an EIS for Pajaro Valley Water Management Agency's (PVWMA) Basin Management Plan Update Project.

The Proposed Action is the approval of the connection of a pipeline to the Santa Clara Conduit, the delivery to and use of Central Valley Project (CVP) water in the Pajaro Valley, and the funding for the design, planning, and construction of a recycled water facility. CVP water to be delivered includes an existing contract assignment from the Mercy Springs Water District to PVWMA, and additional CVP water supplies, including additional contract assignments as required to balance water demands with water supplies in the Pajaro Valley Basin. The facilities that would be constructed for the Proposed Action include a 23-mile-long pipeline and tertiary treatment facilities at the existing Watsonville Wastewater Treatment Plant. Once constructed, these facilities would be operated and maintained by the PVWMA to provide a long-term supplemental supply of water to balance water demands with water supplies in the Pajaro Valley Basin. The Proposed Action is intended to address groundwater overdraft and seawater intrusion problems in the Pajaro Valley Basin.

Through an initial scoping meeting, Reclamation will seek public input on this and other alternatives for consideration in the EIS.

**DATES:** The scoping meeting will be held in Watsonville, California, on August 29, 2001, at 6 p.m.

Submit written comments on the scope of the alternatives and impacts to be considered on or before October 2, 2001.

**ADDRESSES:** The scoping meeting will be held at the Watsonville Senior Center, 114 East 5th Street, Watsonville, CA 95076.

Written comments on the scope of the alternatives and impacts to be considered should be sent to Mr. David Young, Bureau of Reclamation, South-Central California Area Office, 1243 N Street, Fresno, CA 93721–1813; or by telephone at (559) 487–5127; or faxed to (559) 487–5130 (TDD 559–487–5933).

**FOR FURTHER INFORMATION CONTACT:** Mr. David Young, Bureau of Reclamation, (559) 487–5127; or Mr. Charles McNiesh, Pajaro Valley Water Management Agency, (831) 722–9292.

**SUPPLEMENTARY INFORMATION:**

### Pajaro Valley Water Management Agency

The Pajaro Valley Water Management Agency (PVWMA) was formed in 1984 and was charged with protecting and managing the water supplies of the Pajaro Valley and developing additional water supplies necessary to meet existing and future water needs. The PVWMA was formed in response to groundwater overdraft and seawater intrusion problems in the groundwater basin, which were first identified in 1953. The PVWMA service area encompasses approximately 79,000 acres of irrigated agricultural lands and non-irrigated lands in Monterey, San Benito, and Santa Cruz Counties; the City of Watsonville; and the unincorporated communities of Pajaro, Freedom, Corralitos, and Aromas.

### Basin Management Plan (BMP) Update Project

The BMP Update is the water supply management plan developed by PVWMA to balance water demands with water supplies in the Pajaro Valley Basin. The draft BMP update will be available in the fall of 2001 (the last version, entitled the draft Basin Management Plan 2000, was published May 30, 2000). The BMP Update modifies water supply planning information presented in previous studies (including the Basin Management Plan, 1993), defines water supply planning objectives, and outlines a Local-Import Alternative and a Local-Only Alternative. The Proposed Actions to be evaluated in the EIS (connection of a pipeline to the Santa Clara Conduit, the delivery to and use of CVP water in the Pajaro Valley, and the funding for the design, planning, and construction of a recycled water facility) are associated primarily with the Local-Import Alternative; however, Federal funding for a recycled water facility is

proposed under both alternatives. The Local-Import Alternative involves the following improvements:

1. *Groundwater Banking Pipeline.* A 23-mile-long, 54-inch-diameter pipeline is proposed to link the Pajaro Valley with the Santa Clara Conduit of the San Felipe water system. Water would be transported from the San Felipe system into the Pajaro Valley via the pipeline, allowing PVWMA to transport water from the CVP into the PVWMA service area. CVP water deliveries vary each year depending on water availability. The Proposed Action is based on in-lieu recharge of the groundwater basin. During wet years through normal years, PVWMA would provide surface water supplemented as necessary with the minimum quantity of groundwater necessary to meet demand. Consequently, during wet through normal years, the groundwater basin would be allowed to recharge. During dry to critically dry years when CVP water deliveries are cut back, PVWMA would rely on a commensurately greater quantity of groundwater to meet demand.

2. *Water Recycling Facilities.* Tertiary treatment facilities, a pumping plant, and an associated distribution pipeline would be constructed at the existing Watsonville Wastewater Treatment Plant to provide a local water supply. To ensure that the quality of the recycled water would be sufficient for irrigating crops in the Pajaro Valley, the water would be blended with CVP water or groundwater. This is also a component of the Local-Only Alternative; however, the Local-Only Alternative does not include receipt of CVP water and, consequently, groundwater and local surface supplies would be used for blending.

**Previous Environmental Review**

PVWMA has already conducted an environmental review pursuant to CEQA and (NEPA) for components of the Local-Import Alternative, described below.

- Final Program Environmental Impact Report on the Pajaro Valley Water Basin Management Plan, certified by the PVWMA Board of Directors in December 1993. In 1993, PVWMA adopted a Basin Management Plan to identify a preferred water supply alternative for meeting supply needs. A programmatic EIR (PEIR) was developed for the BMP, which addressed water import and local supply concepts at a programmatic level.
- PVWMA Local Water Supply and Distribution Final Environmental Impact Report, certified by the PVWMA Board of Directors in May 1999. This document relied on the 1993 PEIR and further served as a project EIR, providing detailed, site-specific project-level impact and mitigation analysis for proposed local project components, and supported discretionary approvals and implementation without the need for further CEQA review. The local projects evaluated at a project-level of detail in that EIR include Harkins Slough, Murphy Crossing, College Lake, and the Coastal and Inland Distribution Systems. The EIR also evaluated treated effluent conveyance pipelines, but did not evaluate implementation of tertiary treatment and pumping facilities. Consequently, implementation of tertiary treatment and pumping facilities at the City of Watsonville's Wastewater Treatment Plant (WWTP) will be evaluated at a project-level of detail in the BMP Update EIR.
- CVP Water Supply Contract Assignment from Mercy Springs Water District (Contract No. 14–06–200–3365A) to Pajaro Valley Water Management Agency Final Environmental Assessment and Final Finding of No Significant Impact, approved by the U.S. Department of the Interior, Bureau of Reclamation, on November 6, 1998. The Proposed Action evaluated in this document was the assignment of a portion of the Mercy Springs Water District's CVP Contract to PVWMA.

The purpose of the scoping meeting is to receive comments regarding the appropriate scope of the EIS. PVWMA staff will make a brief presentation to describe the proposed project, its purpose and need, project alternatives, and scenarios for construction and operation. The public may comment on the environmental issues to be addressed in the EIS. If necessary due to large attendance, comments will be limited to 5 minutes per speaker.

Reclamation practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: July 16, 2001.

**Frank Michny,**

*Regional Environmental Officer.*

[FR Doc. 01–19440 Filed 8–2–01; 8:45 am]

BILLING CODE 4310–MN–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–443]**

## In the Matter of Certain Flooring Products; Notice of Commission Decision not to Review an Initial Determination Finding That Complainants Have Satisfied the Economic Prong of the Domestic Industry Requirement of Section 337 of the Tariff Act of 1930

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') finding that complainants have satisfied the economic prong of the domestic industry requirement.

**FOR FURTHER INFORMATION CONTACT:** Robin L. Turner, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, tel. (202) 205–3096. Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810. General information concerning the Commission may also be obtained by accessing the Commission's internet server (http://www.usitc.gov). The public record for the this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at http://www.usitc.gov/eol/public.

**SUPPLEMENTAL INFORMATION:** The Commission instituted this investigation on December 29, 2000, based on a complaint filed on behalf of Alloc, Inc., Berry Finance N.V., and Valinge Aluminum AB. There are seven respondents: Unilin Decor N.V., BHK of America, Meister-Leisten Schulte GmbH, Roysol, Akzenta Paneele + Profile GmbH, Tarkett, Inc., and Pergo, Inc. Complainants allege violations of section 337 by reason of infringement of multiple claims of U.S. Letters Patent Nos. 5,860,267 ('267 patent), 6,023,907 ('907 patent), and 6,182,410 ('410 patent).

On May 11, 2001, complainants moved for summary determination on

the economic prong of the domestic industry requirement under section 337. The motion was not opposed by the Commission investigative attorney and certain respondents, but was opposed by other respondents. On July 10, 2001, the ALJ issued an ID (Order No. 26) granting the motion. No party petitioned for review of the ID.

The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930, as amended (19 CFR 1337), and in section 210.42(a) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(a)). Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

By Order of the Commission.

Issued: July 30, 2001.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 01–19372 Filed 8–2–01; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–406, Consolidated Enforcement and Advisory Opinion Proceedings]**

## In the Matter of Certain Lens-Fitted Film Packages; Notice of Institution of Formal Enforcement and Advisory Opinion Proceedings

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has instituted a formal enforcement proceeding relating to certain remedial orders issued at the conclusion of the above-captioned investigation. The Commission has also instituted advisory opinion proceedings in the same investigation. The Commission has determined to deny complainant's request for separate proceedings to modify the remedial orders issued in the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:** Jean Jackson, Esq., telephone 202–205–3104, or Tim Yaworski, Esq., telephone 202–205–3096, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol.public.* Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

**SUPPLEMENTARY INFORMATION:** This investigation was instituted on March 25, 1998, based on a complaint by Fuji Photo Film Co., Ltd. (Fuji) of Tokyo, Japan. 63 FR 14474. Fuji's complaint alleged unfair acts in violation of section 337 of the Tariff Act of 1930 by 27 respondents in the importation and sale of certain lens-fitted film packages (*i.e.,* disposable cameras) that allegedly infringed one or more claims of 15 patents held by complainant Fuji. On February 24, 1999, the presiding administrative law judge (ALJ) issued his final initial determination, finding a violation of section 337 by 26 of 27 named respondents. (During the evidentiary hearing, Fuji withdrew its claims of infringement as to one named respondent.) The ALJ found infringement of 12 utility patents, but found that Fuji failed to carry its burden of proof in showing infringement of three asserted design patents. On June 2, 1999, the Commission terminated the investigation, finding a violation of section 337 by 26 respondents, by reason of infringement of various claims of all 15 patents, including the design patents. 64 FR 30541 (June 8, 1999). The Commission issued a general exclusion order, prohibiting the importation of disposable cameras that infringed any of the claims of the 15 patents at issue, and cease and desist orders to 20 domestic respondents.

On June 27, 2001, Fuji filed a ''Complaint for Enforcement Proceedings Under Rule 210.75, Petition for Modification Under Rule 210.76 and/or Request for Advisory Opinion Under Rule 210.79.'' Fuji's enforcement complaint asserts 22 claims contained in nine utility patents and named 20 entities as ''enforcement respondents.'' On July 18, 2001, Fuji withdrew its complaint against one enforcement respondent, Jazz Photo Corp. On July 20, Fuji withdrew its complaint against two additional enforcement respondents, GrandwayChina and Grandway U.S.A.

The Commission, having examined the request for a formal enforcement proceeding filed by Fuji, and having found that the request complies with the requirements for institution of a formal enforcement proceeding, determined to institute formal enforcement proceedings to determine whether the twelve respondents named below are in violation of the Commission's general exclusion order and/or cease and desist orders issued in the investigation, and what if any enforcement measures are appropriate.

The following were named as parties to the formal enforcement proceeding: (1) Complainant Fuji Photo Film Co., Ltd; (2) respondent Achiever Industries, Ltd., (3) respondent Ad-tek Specialities, Inc.; (4) respondent Americam, Inc.; (5) respondent Argus Industries, Inc; (6) respondent Boeck's Camera, LLC; (7) respondent Camera Custom Design a/k/a Title the Moment; (8) respondent Charles Randolph Company; (9) respondent CS Industries a/k/a PLF. Inc.; (10) respondent The Message Group; (11) respondent Penmax, Inc.; (12) respondent Photoworks, Inc; (13) respondent Vastfame Camera Ltd.; and (14) a Commission investigative attorney to be designated by the Director, Office of Unfair Import Investigations.

The Commission, having examined the request for an advisory opinion filed by Fuji, and having found that the request complies with the requirements for institution of advisory opinion proceedings, determined to institute advisory opinion proceedings to determine whether the importation of certain cameras would violate the general exclusion order issued in the above-captioned investigation. The following were named as parties to the advisory opinion proceedings: (1) Complainant Fuji Photo Film Co., Ltd.; (2) Achiever Industries, Ltd., (3) Ad-tek Specialities, Inc.; (4) Americam, Inc.; (5) Argus Industries, Inc; (6) Atico International USA, Inc.; (7) Boeck's Camera, LLC; (8) Camera Custom Design a/k/a Title the Moment; (9) Charles Randolph Company; (10) CS Industries a/k/a PLF. Inc.; (11) Diamond City International Gift, Inc.; (12) Elite Brands, Inc.; (13) Highway Holdings, Ltd.; (14) The Message Group; (15) Penmax, Inc.; (16) Photoworks, Inc; (17) Sky Light International, Ltd.; (18) Vastfame Camera Ltd.; and (19) a Commission investigative attorney to be designated by the Director, Office of Unfair Import Investigations.

The Commission has denied Fuji's request for separate proceedings to modify the remedial orders issued in the above-referenced investigation. Such orders can be modified, if appropriate, in the context of the enforcement proceedings under Commission rule 210.75, 19 CFR 210.75.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and sections 210.75 and 210.79 of the Commission's Rules of Practice and Procedure (19 CFR 210.75 and 210.79).

Issued: July 31, 2001.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 01–19495 Filed 8–2–01; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–445]**

### In the Matter of Certain Plasma Display Panels and Products Containing Same; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation Based on Withdrawal of the Complaint, and a Schedule for the Filing of Written Submissions on a Recommended Determination

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') granting a motion to terminate the above-captioned investigation based on withdrawal of the complaint, and has determined to issue a schedule for the filing of written submissions to address the former ALJ's May 8, 2001, recommended determination on sanctions.

**FOR FURTHER INFORMATION CONTACT:** Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3152.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on January 16, 2001, based on a complaint filed by the Board of Trustees of the University of Illinois, (''University'') of Urbana, Illinois, and Competitive Technologies, Inc. (''CTI'') of Fairfield, Connecticut. The respondents named in the investigation are Fujitsu Limited, Fujitsu General Limited, Fujitsu General America Corp., Fujitsu Microelectronics, Inc. and Fujitsu Hitachi Plasma Display Ltd. (collectively ''Fujitsu''). The complaint alleged that Fujitsu violated section 337 of the Tariff Act of 1930 by importing into the United States, selling for importation, and/or selling within the United States after importation certain plasma display panels and products containing same by reason of infringement of certain claims of U.S. Letters Patents Nos. 4,866,349, and 5,081,400.

On May 8, 2001, the then ALJ issued a recommended determination (''RD'') on sanctions for breach of the administrative protective order in the investigation.

On June 26, 2001, complainants CTI and University filed a motion pursuant to rule 210.21(a) to terminate the investigation on the basis of withdrawal of the complaint. On July 9, 2001, Fujitsu filed a response and conditioned its support for the termination motion on the release to it of certain documents that complainants claim are privileged. The Commission investigative attorney supported complainants' motion to terminate the investigation.

On July 10, 2001, the presiding ALJ issued an ID (Order No. 26) granting complainants' motion to terminate the investigation. The ALJ found that there was insufficient cause to impose the condition requested by Fujitsu. No party filed a petition to review Order No. 26.

The Commission has determined to issue the following schedule for the parties to the investigation to file written submissions addressing the former ALJ's May 8, 2001, RD on sanctions. Main written submissions must be filed no later than close of business on August 24, 2001. Reply submissions must be filed no later than the close of business on August 31, 2001. No further submissions on this issue will be permitted unless otherwise ordered by the Commission.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rules 210.25 and 210.42, 19 CFR 210.25, 210.42. Copies of the all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http:/www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

By order of the Commission.

Issued: July 31, 2001.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 01–19494 Filed 8–2–01; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. NAFTA–312–1]**

### Certain Steel Wire Rod

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution and scheduling of an investigation under section 312(c)(2) of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3372(c)(2)) (the Act).

**SUMMARY:** Following receipt of a request filed on July 24, 2001, on behalf of Co-Steel Raritan, GS Industries, Inc., Keystone Steel & Wire Company, and North Star Steel Texas Inc., the Commission instituted investigation No. NAFTA–312–1 under section 312(c)(2) of the Act to determine whether a surge in U.S. imports of certain steel wire rod from Canada and/or Mexico undermines the effectiveness of the import relief on wire rod provided for in Presidential Proclamation 7273 of February 16, 2000 (65 FR 8624, February 18, 2000).[1]

**EFFECTIVE DATE:** July 24, 2001.

**FOR FURTHER INFORMATION CONTACT:** Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-

[1] See the Proclamation for a specific definition of the covered products.

ON-LINE) at *http://dockets.usitc.gov/eol/public.*

**SUPPLEMENTARY INFORMATION:**

**Participation in the Investigation and Service List**

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission not later than 2 business days after publication of this notice in the **Federal Register**.[2] The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

**Conference**

The Commission has scheduled a hearing in the form of a staff conference in connection with this investigation for 9:30 a.m. on August 8, 2001, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Debra Baker (202–205–3180) not later than August 6, 2001, to arrange for their appearance. Parties in support of the request in this investigation and parties in opposition to the request will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

**Written Submissions**

Each party is encouraged to submit a preconference brief to the Commission. The deadline for filing such briefs is August 6, 2001. Parties may also file postconference briefs, which shall not exceed 15 pages in length. The deadline for filing postconference briefs is August 10, 2001. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before August 10, 2001. On August 17, 2001, the Commission will make available to parties a public version of the staff report. Parties may submit final comments on or before August 20, 2001, on the basis of this report and other information on which they have not had an opportunity to comment; such comments shall not exceed 15 pages in length. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

The Commission may wish to use in this investigation the information provided in investigation No. TA–204–6, Certain Steel Wire Rod: Monitoring Developments in the Domestic Industry. Any confidential business information submitted in that investigation will be afforded the protection provided under the appropriate statutory authority. Respondents to questionnaires in investigation No. TA–204–6 will be contacted to assure they do not object to use of their data in this investigation. Any U.S. producer, importer, or purchaser that did not provide a questionnaire response in investigation No. TA–204–6 is urged to provide equivalent information in this investigation. If convenient, this may be done by completing the appropriate questionnaire(s) which are available on the Commission's web site at *http://info.usitc.gov/OINV/INVEST/OINVINVEST.NSF;* questionnaires should be returned to the Commission by August 8, 2001.

**Authority:** This investigation is being conducted under the authority of section 312(c) of the Act; this notice is published pursuant to section 206.3 of the Commission's rules.

Issued: August 1, 2001.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 01–19617 Filed 8–2–01; 8:45 am]

BILLING CODE 7020–02–P

[2] The Commission waives the period for entering an appearance under section 201.11 of the Commission's rules in light of the time limits of this investigation.

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Department of Justice policy codified at 28 CFR 50.7 and Section 122 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622, notice is hereby given that on July 24, 2001, a proposed consent decree in *United States* v. *Dayton Power & Light Co., et al.,* No. C–3–98–451, was lodged with the United States District Court for the Southern District of Ohio. The proposed consent decree would settle the United States' claims against eleven Settling Defendants under CERCLA section 107(a)(3), 42 U.S.C. 9607(a)(3), for the recovery of response costs incurred or to be incurred by the United States in connection with the Sanitary Landfill (IWD) Superfund Site (''Site'') in Moraine, Ohio. The proposed consent decree would also resolve the potential liability of the U.S. Department of Energy (''DOE'') for Site response costs. Each of the Settling Defendants is a generator of waste disposed at the Site, which was operated as a licensed landfill by Sanitary Landfill Company and its successor corporations from 1971 to 1980. The U.S. Environmental Protection Agency (''EPA'') incurred costs of approximately $1.2 million in responding to the release or threatened release of hazardous substances at the Site.

Under the terms of the consent decree, the Settling Defendants and DOE agree to pay $303,971 and $5,335, respectively, within thirty (30) days of entry of the consent decree, as reimbursement of response costs. In consideration for these payments, the Settling Defendants will receive a covenant not to sue for Site response costs, DOE will receive a covenant that EPA will not take administrative action against it related to the Site, and both the Settling Defendants and DOE will receive contribution protection for Site response costs. The settlement amounts to be paid by the Settling Defendants and DOE are based on allocation percentages of waste contributed to the Site.

For a period of thirty (30) days from the date of the publication, Department of Justice will receive comments related to the proposed consent decree. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530, and should refer to *United States* v. *Dayton Power & Light Co., et al.,* Civil Action No. C–3–98–451; D.J. Ref. No. 90–11–2–1113A.

The consent decree may be examined at the Office of the United States Attorney, 602 Federal Building, 200 W. 2nd Street, Dayton, Ohio 45402, and at the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of

$8.75 (35 pages at 25 cents per page reproduction cost).

**William Brighton,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 01–19390 Filed 8–2–01; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Clean Water Act, the Resource Conservation and Recovery Act; and the Comprehensive Environmental Response, Compensation, and Liability Act

Consistent with Departmental policy, 28 C.F.R. 50.7, notice is hereby given that a proposed Consent Decree *United States, et al.* v. *Montrose Chemical Corporation of California, et al.,* No. CV 90–3122–R (C.D. Cal), was lodged on July 19, 2001 with the United States District Court for the Central District of California. The consent decree resolves claims under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9607, as amended, brought against defendants Montrose Chemical Corporation of California (''Montrose''), Aventis CropScience USA, Inc. (''Aventis''), Chris-Craft Industries, Inc. (''Chris-Craft''), and Atkemix Thirty Seven, Inc. (''Atkemix-37'') (collectively, the ''DDT Defendents''), for response costs incurred and to be incurred by the United States Environmental Protection Agency in connection with responding to the release and threatened release of hazardous substances at residential properties located in (1) the area of Los Angeles County bounded by Normandie Avenue, New Hampshire Avenue, Torrance Blvd., and Del Amo Blvd., and (2) the area of Los Angeles County bounded by Denker Avenue, Del Amo Blvd. Western Avenue and Torrence Blvd.

The proposed consent decree provides that the DDT Defendants will allow materials excavated from the above-described areas to be placed on their property in storage cells. Defendants also pay $250,000, plus the actual costs of constructing the on-property storage cells (up to $356,000), and will operate and maintain the storage cells for four years. The consent decree includes a covenant not to sue by the United States under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9606 and 9607, and under Section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044; and refer to *United States, et al.* v. *Montrose Chemical Corporation of California, et al.,* No. CV 90–3122–R (C.D. Cal), and DOF Ref #90–11–3–511\3.

The proposed settlement agreement may be examined at the Office of the United States Attorney. Central District of California, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012; and the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed Consent Decree may be obtained by mail from the Department of Justice Consent Decree Library P.O. Box 7611, Washington, DC 20044. In requesting a copy please refer to the referenced case and enclose a check in the amount of $10.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Ellen M. Mahan,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 01–19391 Filed 8–2–01; 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; Advanced Lead-Acid Battery Consortium

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''), Advanced Lead-Acid Battery Consortium (''ALABC'') 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, Yuasa, Inc., Reading, PA is no longer a party 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 ALABC intends to file additional written notification disclosing all changes in membership.

On June 15, 1992, ALABC 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 July 29, 1992 (57 FR 33522).

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 April 24, 2001 (66 FR 20685).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 01–19394 Filed 8–2–01; 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—Application Service Provider Industry Consortium, Inc.

Notice is hereby given that, on May 15, 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''), Application Service Provider Industry Consortium, 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 with the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 360Networks, Seattle, WA; 3Plex, Cambridge, MA; Access Colo, Inc., Morristown, NJ; Afcomp, Dubai internet City, Dubai, United Arab Emirates; Alderan Consultores, Madrid, Spain; Anachron B.V., Amsterdamn, The Netherlands; Anite Business Systems Ltd., Slough, Berkshire, United Kingdom; AppWired, Inc., Las Colinas, TX; Ascension Health Information, Evansville, IN; ASP Konsortium e.V., Unterschleissheim, Germany; ASP-One, Inc., Skokie, IL; asset-management.com Ltd., London, United Kingdom; Avaya Inc., Basking Ridge, NJ; B2Biscom S.p.A., Milano, Italy; BellSouth, Atlanta, GA; Blixer S.p.A., Milan, Italy; Bright Sage, Inc., Chicago, IL; Carolinas Imaging, Durham, NC; Chemresult.Com,

Oevel, Belgium; Ciaoservice, Torino, Italy; Clicksure Limited, Oxford, United Kingdom; Comverse Network Systems, Hertzelia, Israel; Copper Dragon Limited, Derby, Derbyshire, United Kingdom; DotsConnect, Columbus, GA; E-Business, Malakoff Cedea, France; Efluxa s.r.l., Milano, Italy; eOnline, Inc., Cupertino, CA; Equative, Inc., Newport Beach, CA; Erogo, Tustin, CA; Extensity, Inc., Emeryville, CA; Fairwell, Paris, France; Funder Online Corp., Burlington, Ontario, Canada; Global APP, Santa Barbara, CA; GoToWeb S.p.A., Turin, Italy; Innoways Limited, Northpoint, Hong Kong—China; InsureHiTech, Cambridge, MA; InterchangeDigital, Inc., Des Plaines, IL; Internet Appliances, Inc., Fremont, CA; Interoperability Technology Association for Information Processing, Tokyo, Japan; ITNET, Birmingham, United Kingdom; Korbi.Net (PTY) Ltd., Cape Town, South Africa; Korea Association of Information & Teleco, Seacho-GU, Republic of Korea; M7 Networks Inc., San Diego, CA; Modus Novo, Lod, Israel; Mogul Services AB, Stockholm, Sweden; Namaya Technologies Ltd., Kfar Saba, Israel; Novant Health, Winston-Salem, NC; Oak Grove Systems Inc., Altadena, CA; Performix Technologies Ltd., Dublin, Ireland; Ramboll Informatik A/S, Virum, Denmark; RealScale Technologies, Zaventem, Belgium; Stonehouse Technologies, Inc., Plano, TX; Tecnidata-ASP, Lisbon, Portugal; Telecel Online, Lisbon, Portugal; Telecom Italia S.p.A., Roma, Italy; Telverse Communications, Dulles, VA; Toolwire Inc., Milpital, CA; Whale Communications, Fort Lee, NJ; Wizmo Inc., Eden Prairie, MN; Corechange, Inc., Boston, MA; Net2ASP, Ottawa, Ontario, Canada; Star 21 Networks (formerly Star One), Frankfurt, Germany; Into Networks, Cambridge, MA; Financial Markets Solutions, Bellevue, WA; Paperfly Corporation, Sunnyvale, CA; Ingram Micro, Santa Ana, CA; TeleCity, London, United Kingdom; Avasta, Inc. (formerly Chapter2), San Francisco, CA; Intel Online Services, Seattle, WA; Telebright S.A., Santiago, Chile; Atesto Technologies Inc., Fremont, CA; Peregrine Systems, Inc., San Diego, CA; Aleph SRL., San Martino Ulmiano, Italy; NSM Global Inc., Pickering, Ontario, Canada; RapidStream, Inc., San Jose, CA; NC-Virtual Systems Holding BV, Amsterdam, The Netherlands; Info Directions, Inc., Victor, NY; Accenture (formerly Andersen Consulting), Chicago, IL; J.P. Morgan Advisory Services, Inc., Cambridge, MA; correctnet global information solutions, Inc., Hauppauge, NY; eFront, Paris, France; Veracicom, Tacoma, WA; Consortio, Inc., Bellevue, WA; East.net (China) Co. Ltd., Beijing, People's Republic of China; SupplyScience, Westwood, MA; Aspin Networks, Inc., Naperville, IL; Kika Medical, Nancy, France; TrueSpectra, Inc., Burlingame, CA; Lost Wax, Richmond, Surrey, United Kingdom; ENX, Inc., Cupertino, CA; Wipro Tedchnologies, Santa Clara, CA; The Agilience Group, Munchen, Germany; Call Sciences Ltd., Slough, Berkshire, United Kingdom; Novis Telecom, SA, Senherada Hora, Portugal; eMobile Data Inc., Richmond, British Columbia, Canada; Linux-At-Business, Saint Denis, France; Prescient Hosting LLC, Atlanta, GA; Kiodex, Inc., New York, NY; Netragon AG, Schwalbach, Germany; iVita Corporation, Houston, TX; Backplane, Inc., Emeryville, CA; Liberator Limited, Zelienople, PA; PatchLink Corp. (formerly PatchLink.com Corporation), Scottsdale, AZ; Virtage, Lod, Israel; Virtual Computer, Maurepas, France; AHP, Informatica e Servicos, Lda, Lisboa, Portugal, Blue292, Durham, NC; Intranology, Montgomery, AL; GlobalNet Telecommunications International Limited, North Point, Hong Kong-China; Lumedx Corporation, Oakland, CA; Coradiant Inc., Boston, MA; Enterpulse, Decatur, GA; Akazi Technologies, Grenoble, France, IP Applications Corp., New Westminster, British Columbia, Canada; Sandy Bay Networks, Burlington, MA; WM-data infra Solutions/ASP-Solutions, Stockholm, Sweden; Market Place Print, Inc., Pittsburgh, PA; Centra Software, Lexington, MA; UBICCO, Paris, France; ESB International Computing, Dublin, Ireland; Aurigin Systems Inc., Cupertino, CA; InterConnect Exchange Europe Ltd., West Draxton, Middlesex, United Kingdom; CDG Europe b.v., Zuid-Holland, The Netherlands; e-Business Australia Pty. Ltd., Melbourne, Victoria, Australia; Optial Corporation, Alpharetta, GA; Watchfire Corporation, Kanata, Ontario, Canada; Electronic Data Systems, Plano, TX; Vectant, Inc., New York, NY; 724 Solutions, Inc., Toronto, Ontario, Canada; ASPGulf.Com Limited, Dubai, United Arab Emirates; Opticom, Andover, MA; Batelco Jeraisy Limited, Riyadh, Saudi Arabia; Engyro Inc., Shelton, CT;

EPIK Communications, Orlando, FL; American Institute of Certified Public Accountants (AICPA), New York, NY; LoudCloud, Inc., Sunnyvale, CA; MH2Technologies, Ltd., Dallas, TX; ThinPrint GmbH, Berlin, Germany; uni-X Software AG, Osnabriick, Germany; Metanext, Montrouge, France; TruArc, Inc. (formerly Prevenance Systems, Inc.), Arlington, VA; Merkatum Corporation, Coral Gables, FL; Inciscent, Falls Church, VA; Telution, Chicago, IL; CosmoCom, Inc., Melville, NY; BroadBend Office, San Mateo, CA; Seismiq, Inc., Florham, NJ; CCC Network Systems, Hicksville, NY; DST International Limited, Surbiton, Surrey, United Kingdom; SearchASP.com, Dedham, MA; Meteor, San Mateo, CA; ViewGate Networks, Inc., Alexandria, VA; NextCorp, Ltd., Irving, TX; Yube, Santa Clara, CA; interlinkONE, Inc., Wilmington, MA; SupplyWorks, Inc., Bedford, MA; Tidemark Solutions, Seattle, WA; Cognos Corporation, Burlington, MA; Reliable Integration Services, Inc., Tysons Corner, VA; Dataweb, Richelieu, France; AleNet, Inc., Coral Gables, FL; US Power Solutions, Cambridge, MA; Netesi S.p.a., Milano, Italy; Kyneste SpA, Rome, Italy; Vastera, Inc., Dulles, VA; NetIQ Corporation, San Jose, CA; Locale Systems Corporation, Austin, TX; Talisma Corporation, Kirkland, WA; congruency, Inc., Rochelle Park, NJ; BV Solutions Group, Inc., Overland Park, KS; Selectica, Inc., San Jose, CA; Eircom plc, Dublin, Ireland; Genesis-IT AB, Lucea, Sweden; Radware Inc., Mahway, NJ; CrossCommerce, Inc., San Francisco, CA; Gomez

Networks, Lincoln, MA; GotMarketing.com, Nepean, Ontario, Canada; MetalMaker, Inc., Chicago, IL; Damian Services Corporation, Chicago, IL; Armstrong Information Technology Group, Butler, PA; Bahwan CyberTek Technologies, Inc., Natick, MA; Driveway Corporation, San Francisco, CA; dbaDirect, Inc., Florence, KY; Applied Computer Services Co. [HASIB], Ravidh, Saudi Arabia; Trend Micro, Inc., Cupertino, CA; Ziptone, LLC, Cedar Knolls, NJ; nTeras Corporation, American Fork, UT; Defense Enterprise Computing Ctr. Columbus, Columbus, OH; DocuTouch, Seattle, WA; LivePerson, Inc., New York, NY; Nupremis, Inc., Boulder, CO; EPASYS Corporation, Concord, MA; eTopware Inc., Addison, TX; Qi, Sydney, NSW, Australia; Skyrr Ltd., Reykjavik, Iceland; Computacenter PLC, Hatfield, Hertfordshire, United Kingdom; ISION Internet AG, Hamburg, Germany; Alentis, Austin, TX; USADATA.com, New York, NY; TidePoint, Baltimore, MD; KW International Ltd., London, United Kingdom; Blaze Software, San Jose, CA; e4eNet, Inc., Waltham, MA; zappz, inc., Houston, TX; Trema (Americas), Inc., Boston, MA; Siemens Communications Limited, Milton Keynes, England, United Kingdom; fusionOne, Inc., San Jose, CA; Eisner Technology Solutions,

New York, NY; Sitescape, Alexandria, VA; Telseon, Inc., Palo Alto, CA; iProvide, Watford, United Kingdom; Application Broadcasting International, Indianapolis, IN; J-Commerce, Inc., Calgary, Alberta, Canada; Empact Solutions, Inc., Weehawken, NJ; Elantix Corporation, Woburn, MA; Andate GmbH, Eschborn, Germany; Systems Fusion, San Francisco, CA; Sonera Juxto Oy, Sonera, Finland; BizProLink.com. Inc., Ft. Lauderdale, FL; yellowworld AG, Berne, Switzerland; HighDeal, Fremont, CA; Intermedia.NET, Palo Alto, CA; XACCT Technologies, Inc., Santa Clara, CA; Intelligent Sales Objectives, Cedex, France; Cimmetry Systems, Inc., St. Laurent, Quebec, Canada; Marconi plc, Warrendale, PA; StorageASP, Toronto, Ontario, Canada; Cereva Networks Inc., Marlborough, MA; Menta Software Ltd., Givat Shmuel, Israel; Covation, Brentwood, TN; KM Technologies, Inc., Montreal, Quebec, Canada; Frontera Corporation (HomePage.com), Los Angeles, CA; PlateSpin, Inc., Toronto, Ontario, Canada; Nimeta, Moscow, Russia; Delray Technologies, Inc., Delray Beach, FL; ISG, Inc., Holland, MI; Techsar, Inc., San Jose, CA; The AIMS Group, Jacksonville, FL; BEA Systems, Inc., San Jose, CA; MobilCom e-business GmbH, Keil, Germany; Mobileaware, Dublin, Ireland; Telepac, Alges, Portugal; RightNow Technologies, Inc., Bozeman, MT; anchorSilk Inc., Bedford, MA; Voci Corporation, Campbell, CA; Cashware, Paris, France; eircom Multimedia, Dublin, Ireland; e-chiron—Gestao de Aplicacoes de Software, Monte da Caparica, Portugal; Ci2i, Austin, TX; Abridge, Inc., New York, NY; Personal Computers, Inc., Buffalo, NY; Centerian, Ltd., Coral Gables, FL; iLatinaB2B Business Svcs. Holding Inc., Cerrito, Argentina; Aspen Technologies, Williamsville, NY; NetworkOSS, Inc., Woodbridge,
NJ; Flatrock, Inc., Portland, OR; Allied Utility Network, Atlanta, GA; Keylime, Carlsbad, CA; Webgenerics, London, United Kingdom; Alwaha Est. for Contracting & Trading, Doha, Qatar; YASP Technologias de Informacao, S.A., Linho Sintra, Portugal; Open Text Corporation, Waterloo, Ontario, Canada; Systems and Computers Technology, Columbia, SC; eQuest Technologies, Inc., Gaithersburg, MD; Netopia, Inc., Almeda, CA; MyAdGuys.com, New York, NY; ORNIS ASP, Paris, France; InfiNet, Norfolk, VA; docHarbor, Reading, MA; eCenter, Krakow, Poland; Aspectra AG, Zurich, Switzerland; Softricity, Inc., Boston, MA; Weir Systems, LTD, Glasgow, United Kingdom; Business Link International, Providence, RI; Trinity Technology Co., Dublin, Ireland; OneChem, Ltd., Ridgefield, CT; Intelliflo Plc., Wimbledon, United Kingdom; and EurASP, Gent, Belgium have been added as parties to this venture.

Also, @ccelerate Software, Inc., San Jose, CA; 2nd Wave, Dallas, TX, 2WAY Corporation, Seattle, WA; Access Data Corporation, Pittsburgh, PA; AccTrak21 Inc., Santa Clara, CA; ACS, Dallas, TX; Active Software, Santa Clara, CA; Alitum, San Diego, CA; Allied Riser Communications, Dallas, TX; Anacomp, Inc., Poway, CA; Andalon.com, Buffalo, NY; Aplion Networks, Edison, NJ; AppNet, Inc., Bethesda, MD; AppStream, Inc., Mountain View, CA; Aptis, Inc., San Antonio, TX; Asia Online, Ltd., Hong Kong-China; ASPEC 2000, Atlanta, GA; aspective, Huntingdon, Cambridgeshire, United Kingdom; ASP-One Inc./Prologue Software, Skokie, IL; Atraxis, Zurich, Switzerland; Atreus Systems Corporation, Ottawa, Ontario, Canada; Attenda, London, United Kingdom; Biopop Integration Group, Charlotte, NC; Bluestone Software Inc., Philadelphia, PA; Borland (formerly Inprise Borland), Scotts Valley, CA; Breakaway Solutions, Inc., Boston, MA; BusinessEdge Solutions, Edison, NJ; CalendarCentral, Cary, NC; Canopy International, Newton, MA; Capstan Systems, Inc., San Francisco, CA; Captura, Kirkland, WA; CareTech Solutions, Inc., Southfield, MI; Center7, Inc., Lindon, UT; CenterBeam, Inc., Santa Clara, CA; Centromine, Ann Arbor, MI; Chell Merchant Capital, Calgary, Alberta, Canada; Choice Logic Corporation, Millburn, NJ; CITEC, Brisbane, Queensland, Australia; City Reach International, London, United Kingdom; CMeRun Corporation, Hudson, MA; CMHC Systems, Dublin, OH; CobWeb, Inc., Belleview, WA; CollegeNET, Inc., Portland, OR; Comdisco, Rosemont, IL; Computron Software, Inc., Rutherford, NJ; Compuware Corporation, Campbell, CA; Corel Corporation, Ottawa, Ontario, Canada; Corona Networks, Milpitas, CA; Cosaweb Inc., Downer's Grove, IL; CrossKeys, Kanata, Ontario, Canada; CyberSource Corporation, San Jose, CA; CyberTech Systems, Inc., Trevose, PA; Cyrus InterSoft, Inc., Minneapolis, MN; dakota imaging, inc., Columbia, MD; Deltek Systems, Inc., McLean, VA; Digital Broadband Communications, Waltham, MA; Digital Island, Inc., San Francisco, CA; Eftia OSS Canada; eGain Communications Corp., Sunnyvale, CA; ehost Europe Co, Dublin, Ireland; Ellacoya Networks, Inc., Merrimack, NH; Eltrax Systems Inc., Atlanta, GA; Emperative, Boulder, CO; EpicEdge, Houston, TX; Eprise Corporation, Framingham, MA; Ernst & Young, Calgary, Alberta, Canada; Esat Net, Dundrum Business Park, Dublin, Ireland; Ethentica, Inc., Lake Forest, CA; Evalis AG, Koln, Germany; EvolutionB, Vancouver, British Columbia, Canada; Excalibur Technologies Corp., Vienna, VA; Exclaim Technologies, Inc., San Jose, CA; Exenet Technologies, Inc., New York, NY; Exent Technologies Inc., Bethesda, MD; Exodus Communication, Santa Clara, CA; F5 Networks, Seattle, WA; FairMarket, Inc., Woburn, MA; FASTNET Corporation, Bethlehem, PA; FutureLink, Lake Forest, CA; Global ASP, Paris, France; GWA Information Systems, Inc., Concord, MA; HydraWEB Technologies, New York, NY; InfoCast Corporation, Toronto, Ontario, Canada; InfoCure, Atlanta, GA; InfoInterActive Inc., Bedford, Nova Scotia, Canada; Informative, Inc., S. San Francisco, CA; Informix Software Inc., Menlo Park, CA; Instinctive Technology, Inc., Cambridge, MA; InsynQ, Inc., Tacoma, WA; Intelligroup, Inc., Edison, NJ; Interland, Inc., Atlanta, GA; Intesa, Caracas, Venezuela; Intraclient Networks, Inc., Santa Clara, CA; Intraco Systems, Inc., Boca Raton, FL; IntraLinks, Inc., New York, NY; JAWZ Inc., Calgary, Alberta, Canada; JSB Corporation, Scotts Valley, CA; KPMG, LLP, Malvern, PA; Kronos Incorporated, Chelmsford, MA; LASON, Inc., Troy, MI; Law.com, Denver, CO; Managemark, Sunnyvale, CA; Marathon Technologies Corporation, Boxboro, MA; Maxspeed Corporation, Palo Alto, CA; MDSI Mobile Data Solutions, Richmond, British Columbia, Canada; Mercury Interactive, Sunnyvale, CA; MSHOW.com, Highlands Ranch, CO; Nareo, San Francisco, CA; netalone.com (Hong Kong) Limited, Hong Kong, Hong Kong-China; Netegrity, Waltham, MA; NetNation Communications Inc., Vancouver, British Columbia, Canada; NetToll, Issy les Moulineaux Cedex, France; Network-1 Security Solutions, Inc., Waltham, MA; New Edge Networks, Vancouver, WA; New World Apps, Inc., Vienna, VA; North Systems, Inc., San Francisco, CA; Northgate Information Solutions plc, Hemel Hempstead, Hertfordshire, United Kingdom; Novell, Orem, UT; NTT America, Inc., Mountain View, CA; NuSpeed, Maple Grove, MN; ObjectSwitch, San Rafael, CA; OmniSpace Technologies, Dallas, TX; ON Technology Corporation, Waltham, MA; onShore, Inc., Chicago, IL; openwave (formerly @mobile.com), Bellevue, WA; Optika, Inc., Colorado Springs, CO; Oracle Corporation, Redwood Shores, CA; Orcom Solutions, Inc., Bend, OR; Paradigm 3, San Jose,

CA; PeerLogic, Inc., San Francisco, CA; Personable.com Inc., Fountain Valley, CA; PlaceWare, Inc., Mountain View, CA; Pointivity, Inc., San Diego, CA; Portal Software, Inc., Cupertino, CA; PSINet Consulting Solutions, Alpharetta, GA; Push, Santa Barbara, CA; QSP Inc., Raleigh, NC; Quad Research, Irvine, CA; Quest Software, Irvine, CA; Quintessent Communications, Inc., Redmond, WA; Rackspace Managed Hosting, San Antonio, TX; Raymond James & Associates, St. Petersburg, FL; REL–TEK Systems & Design, Inc., Rockville, MD; Resonate, Inc., Sunnyvale, CA; Response Networks, Inc., Alexandria, VA; RHYTHMS NetConnections, Englewood, CO; Science Aplications International Corp., San Diego, CA; Securant Technologies, San Francisco, CA; Semeru Solutions, New York, NY; SevenMountains Software, Inc., San Mateo, CA; ShopTok, San Francisco, CA; Shoreline Communications, Sunnyvale, CA; Sideware Systems Inc., North Vancouver, British Columbia, Canada; SITA, Valbonne, France; SmartSynch, Inc., Jackson, MS; Softrax Corporation, Canton, MA; Solect Technology Group, Toronto, Ontario, Canada; Spacedisk, Inc., Londonderry, NH; Spirian Technologies, Inc., Chicago, IL; SS & C Technologies, Windsor, CT; Stratech Systems Limited, The Synergy, Singapore, Singapore; SunGard Computer Services Inc., Wayne, PA; Switch & Data Facilities Company LLC, Tampa, FL; Symantec Corporation, Cupertino, CA; Syntacom IT-Services Inc., Waltham, MA; TabWare Software, Greenville, SC; Technology Solutions Company, Chicago, IL; TeleCore, Inc., Newport Beach, CA; Teleglobe Communications, Reston, VA; Teleias, Toronto, Ontario, Canada; TeleVideo, Inc., San Jose, CA; Texar (formerly Texar Software Corporation), Ottawa, Ontario, Canada; The TriZetto Group, Newport Beach, CA; The viaLink Company, Edmond, OK, Tie Solutions, Inc., Newton, MA; Top Layer Networks, Westboro, MA; TriStrata, Inc., Redwood Shores, CA; TRW, Reston, VA; US West Denver, CO; Universal, Marlton, NJ; Velocity Computer Solutions, Burnaby, British Columbia, Canada; Vencomm.net, Denver, CO; VeriCenter, Inc., Stafford, TX; Verso Technologies, Atlanta, GA; Vertical Networks, Synnvale, CA; Voyant Technologies, Westminster, CO; WebPLAN, Kanata, Ontario, Canada; WinStar, New York, NY; WYSE Technology, Inc., San Jose, CA; XcelleNet, Alpharetta, GA; Xeno Group, San Francisco, CA; XOR, Inc., Boulder, CO; Yummy.com, Vancouver, British Columbia, Canada; Zantaz.com, Pleasanton, CA; ZLand.com, Aliso Viejo, CA; 3Com Corporation, Holmdel, NJ; AboveNet Communications, Inc., San Jose, CA; Aegis Consulting, LLC, McLean, VA; Agilera (formerly CIBER Enterprise Outsourcing), Columbia, SC; Allaire Corporation, Cambridge, MA; Apeldorn's Communication & Information Tech GmbH, Bad Homburg, Germany; Appliant, Inc., Seattle, WA; Arqana Technologies Inc., Mississauga, Ontario, Canada Aventail Corp, Seattle, WA; Avnet, Tempe, AZ; BCA it Ltd., S. Melbourne, Victoria, Australia; Blue Sky Technology Services, Delray Beach, FL; Cable & Wireless, Vienna, VA; ChoicePoint Tipton, PA; Clarus Corporation, Suwanee, GA; Concentric Network, San Jose, CA; Concord Communications, Inc., Marlboro, MA; Conference Plus, Inc., Schaumberg, IL; Data General, Westboro, MA; Data Return Corporation, Irving, TX; eALITY, Inc., Foster City, CA; ebaseOne Corp., Houston, TX; Eggrock Partners, LLC, Concrod, MA; ELF Technologies, Inc., Issaquah, WA; Eltrax Systems Inc. (New Name Verso Technologies), Atlanta, GA; Envive Corporation, Mountain View, CA; EPiCON, Inc., Chelmsford, MA; Evalis AG, Koln, Germany; FirstSense, Burlington, MA; GTE, Irving, TX; HotOffice Technologies, Inc., Boca Raton, FL; Imagcom, Arlington Heights, IL; InfoStream ASA, Oslo, Norway; IT Support Center, Inc., Dothan, AL; ITNET, Birmingham, United Kingdom; Jato Communications, Denver, CO; JustOn, Palo Alto, CA; LearningStation.com, Charlotte, NC; Logix Communications Corp., Oklahoma City, OK; Managed Object Solutions, Inc., McLean, VA; Mentergy, Troy, NY; MUA Pty Ltd., Artarmon, NSW, Australia; Multrix Group, N.V., Amsterdam, The Netherlands; National Semiconductor, Santa Clara, CA; NaviSite, Inc., Andover, MA; Netier Techologies, Inc., Carrollton, TX; Netigy, San Jose, CA; Network Computing Devices, Mountain View, CA; NorthPoint Communications, San Francisco, CA; PBM Corp., Cleveland, OH; Pilot Network Services, Inc., Alameda, CA; Pivotal Corporation, Kirkland, WA; PreferSoft Solutions, Inc., Scotts Valley, CA; Princeton Financial Systems, Princeton, NJ; Professional Advantage, North Sydney, NSW, Australia; SAGA Software, Inc., Reston, VA; SalesLogix Corporation, Scottsdale, AZ; Sequent Computer Systems, Beaverton, OR; Sharp Electronics Corp., Mahwah, NJ; Softblox, Inc., Atlanta, GA; Solution 6 Pty Ltd., Sydney, NSW, Australia; StorageNetworks, Inc., Waltham, MA; Surebridge, Inc., Lexington, MA; Telcordia Technologies, Piscataway, NJ; Tequinox, A Div. of Mincom Limited, Stames Corner QL, Australia; Vscource, Ventura, CA; Workscape, Inc., Natick, MA; Wyzdom Solutions, Inc., San Francisco, CA; X-Collaboration Software Corporation, Boston, MA; ApplicationStation.com, Charlotte, NC; Apptus, Inc., Reston, VA; b2bsolutionsonline, Billingham, Teeside, United Kingdom; Convergence, Inc., Tampa, FL; Eltrax Systems Inc., Atlanta, GA; Foreshock, Inc., Irvine, CA; IT Support Center, Inc., Dothan, AL; Korea Digital Line, Seoul, Republic of Korea; L.I.M.S. (USA) Inc., Hollywood, FL; Mindbridge.com, Fort Washington, PA; NBNTech Inc., Lanham, MD; Network Integration Solutions, Inc., Seattle, WA; New Millennium Games, Reno, NV; Telcel Celular, C.A/T-Net, Los Palos Grandes, Caracas, Venezuela; Telstra Corporation, Melbourne, Victoria, Australia; and Veracicom, Seattle, WA 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 Application Service Provider Industry Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On July 28, 1999, Application Service Provider Industry 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 March 21, 2000 (65 FR 15174).

The last notification was filed with the Department on February 2, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 20, 2001 (66 FR 15757).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 01–19395 Filed 8–2–01; 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; DVD Copy Control Association (''DVD CCA'')

Notice is hereby given that, on April 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''), DVD Copy Control Association (''DVD CCA'') 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 Acer Laboratories Inc., Taipei, Taiwan; Advanced Media Corporation, Tokushima, Japan; Afreey Inc., Taipei, Taiwan; Ahead Software GmbH, Karlsbad, German; Alco Electronics, Ltd., Quarry Bay, Hong Kong-China; Alcorn McBride Inc., Orlando, FL; Alpine Electronics; Inc., Fukushima-Ken, Japan; Americ Disc Inc., Salida, CA; AMLogic Inc., San Jose, CA; Amoisonic Electronics Co., Ltd., Xiamen, People's Republic of China; Apple Computer, Inc., Cupertino, CA; Argosy Research Inc., Hsinchu, Taiwan, ATI Technologies Inc., Thornhill, Ontario, Canada; ATL Electronics (M) Sdn, Kedah, Malaysia; Bang & Olufsen A/S, Struer, Denmark; Beautiful Enterprise Co., Ltd., Kowloon, Hong Kong-China; Bestdisc Technology Corporation, Kee-Lung, Taiwan; Bien Technology Corporation, Taipei, Taiwan; BMG Storage Media, Gutersloh, Germany; C-Cube Semiconductor II Inc., Milpitas, CA; CDA Datentrager Albrechts GmbH, Albrechts, Germany; Chaintech Computer Co., Ltd., Taipei Hsien, Taiwan; Changzhou Shinco Digital Technology Co., Ltd., Changzhou Jiangsu, People's Republic of China; Changzhou ZingQui Electric Co., Ltd., Changzhou Jiangsu, People's Republic of China; Cinet AS, Oslo, Norway; Cinram International, Inc., Toronto, Ontario, Canada; Cirrus Logic, Inc., Freemont, CA; Clarion Co., Ltd., Tokyo-To, Japan; C-Media Electronics Inc., Taipei, Taiwan; Compal Electronics, Inc., Taipei, Taiwan; Compaq Computer Corporation, Houston, TX; Computer & Entertainment, Inc., Taipe, Taiwan; Condor CD S.L., Calatayud (Zaragoza), Spain; Creative Technology Ltd., Singapore, Singapore; Crest National, Hollywood, CA; CyberLink Corporation, Taipei Hsien, Taiwan; Daesung Eltec Co., Ltd., Seoul, Republic of Korea; Daewood Electronics Co., Ltd., Kyonggi Do, Republic of Korea; Daikin Industries, Tokyo, Japan; Dell Computer Corporation, Round Rock, TX; Deluxe Video Services, Inc., Northbrook, IL; Desay A&V Science and Technology Co., Ltd., Guangdong, People's Republic of China; Disctronics Manufacturing (UK) Limited, Southwater, West Sussex, United Kingdom; Doug Carson & Associates, Inc., Cushing, OK; E&S Electronics Co., Ltd., Seoul, Republic of Korea; Eastman Kodak Company, Rochester, NY; Eclipse Data Technologie, Pleasanton, CA; Ecom Inc., Tokyo, Japan; Edge Electronics, Inc., Ronkonkoma, NY; Electric Switch Limited, London, United Kingdom; EMI Group PLC, London, United Kingdom; Epson Direct Corporation, Nagano-Ken, Japan; Escient Technologies, LLC, Indianapolis, IN; E-Smart Electronics Ltd., Kowloon, Hong Kong-China; Esonic Technology Corp., Taipei, Taiwan; ESS Technology, Inc., Freemont, CA; Etronics Corporation, Incheon, Republic of Korea; First International Computer, Inc., Taipei Hsien, Taiwan; Fly Ring Digital Technology Ltd., Northpoint, Hong-Kong-China; FM Com Corp., Seoul, Republic of Korea; Friendly CD-Tek Corporation, Taipei, Taiwan; FujiFilm Microdevices Co., Ltd., Miyagi, Japan; Fujitsu Limited, Kawasaki, Japan; Funai Electric Co., Ltd., Osaka, Japan; Future Media Productions, Inc., Valencia, CA; Gema O.D.S.A., Barcelona, Spain; Goldteck International Inc., Taipei, Taiwan; Great China Technology Inc., Taipei Hsien, Taiwan; Guangdong Nintaus Electronics Co., Ltd., Guandong, People's Republic of China; GVG Digital Technology Holdings (HK) Limited, Shatin, N.T., Hong Kong-China; Gynco Electronics (HK) Ltd., Kowloon, Hong Kong China; Harman International Industries Inc. (Madrigal Audio), Northridge, CA; Hermosa Cysware Ltd., Taipei, Taiwan; Hewlett-Packard Company, Cupertino, CA; Highlead Technology, Inc., Taipei Hsien, Taiwan; Hirel Company, Tokyo, Japan; Hisaki Sekkei Inc., Fukushima, Japan; Hitachi Ltd., Tokyo, Japan; Hua Du Shi Teng Wei Electronic Factory, Kowloon Bay, Hong Kong-China; Iavix Technology Co., Ltd., Taipei, Taiwan; Imagica Corporation, Tokyo, Japan; Infineon Technologies Corporation, San Jose, CA; Infodisc Technology Co., Ltd., Taipei, Taiwan; Intel Corporation, Hillsboro, OR; InterMagic Corporation, Seoul, Republic of Korea; InterVideo, Inc., Fremont, CA; Inventec Corporation, Taipei, Taiwan; Iomega Corporation, Roy, UT; Jaton Computer Co., Ltd., Bangkok, Thailand; Jeong Moon Information Co., Ltd., Kyeongki-Do, Republic of Korea; Jeu Hang Technology Co., Ltd., Taipei, Taiwan; Jointech (HK) Limited, Kwun Tong, Hong Kong-China; KDG France, St. Michael sur Meurthe, France; Kenden Corporation, Tokyo, Japan; Kenwood Corporation, Tokyo, Japan; Konka Group Co., Ltd., Shenzhen Special Zone, People's Republic of China; Leadtek Research Inc., Taipei Hsien, Taiwan; LG Electronics, Inc., Seoul, Republic of Korea; Linux Technology Ltd., Taipei, Taiwan; Lite-On Technology Corp., Taipei, Taiwan; LSI Logic Corporation, Milpitas, CA; LSI Systems, Inc., Kawasai Kanagawa, Japan; LuxSonor Semiconductors, Inc., Fremont, CA; Makidol Electronics Co., Ltd., Longhua, Shenzhen, People's Republic of China; Margi Systems, Inc., Fremont, CA; Matsushita Electric Industrial Co., Ltd. Osaka, Japan; Maxwell Productions LLC, Scottsdale, AZ; MbyN Inc., Kyungki-do, Republic of Korea; Media Dimensions, Inc., Austin, TX; Media Tek Inc., Hsin-Chu City, Taiwan; Megamedia Corporation, Keelung, Taiwan; Memory-Tech Corporation, Ibaragi-ken, Japan; Meridian Audio Limited, Huntingdon, Cambridgeshire, United Kingdom; Metatec International Corporation, Dublin, OH; Metro-Goldwyn-Mayer Studios Inc., Santa Monica, CA; MGI Software Corporation, Richmond Hill, Ontario, Canada; Microservice Technologia Digital S/A, Sao Paulo, Brazil; Mitsubishi Electric Corp., Tokyo, Japan; Mitsumi Electric Co., Ltd., Tokyo, Japan; Motorola, Inc., Austin, TX; Mustek Systems Inc., Hsin-Chu, Taiwan; Nakamichi Corporation, Tokyo, Japan; National Semiconductor Corp. (Mediamatics), Santa Clara, CA; NEC USA, Inc., New York, NY; New Japan Radio Co., Ltd., Tokyo, Japan; Ngai Lik Electronics Co., Ltd., Kowloon, Hong Kong-China; NHK Technical Services Inc., Tokyo, Japan; Nimbus CD International, Inc. dba Technicolor, Ruckersville, VA; Nippon Columbia Co., Ltd., Tokyo, Japan; Novac Co., Ltd., Tokyo, Japan; Oak Technology, Inc., Sunnyvale, CA; Onkyo Corporation, Osaka, Japan; OPT Corporation, Nagano-ken, Japan; Orient Power Multimedia Ltd., Kowloon, Hong Kong-China; Orion Electric Co., Ltd., Fukui, Japan; Pan-International Industrial Corp., Hsinchu City, Taiwan; Pioneer Corporation, Tokyo, Japan; PitsExpert Technology Co., Ltd., Taipei, Taiwan; Pony Canyon Enterprise Inc., Tokyo, Japan; PT Hartono Istana Technologi, Kudus, Indonesia; QNX Software Systems Ltd., Kanata, Ontario, Canada; Quanta Computer Inc., Tao Yuan Shieh, Taiwan, Ravisent Technologies, Malvern, PA; Ray Corporation, Tokyo, Japan; Ricoh Company Ltd., Yokohama-shi, Japan; Ryosan Company, Limited, Tokyo, Japan; Sampo Corporation, Taipei Hsien, Taiwan; Samsung Electronics Co. Ltd., Kyungki-Do, Republic of Korea; Sanyo Electric Co., Ltd. Osaka, Japan; Sanyo Laser Products, Inc., Richmond, IN; Sensory

Science Corporation, Scottsdale, AZ; Sharp Corporation, Osaka, Japan; Shenzhen Sangda Baodian Co., Ltd., Shenzhen, Guangdong, People's Republic of China; Shenzhen WED Development Co., Ltd., Shenzhen, Guangdong, People's Republic of China; Shiba-Tech Co., Ltd., Kowloon, Hong Kong-China; Shinano Kenshi Co., Ltd., Nagano-ken, Japan; Shinwa Industries (China) Ltd., Guangdon, People's Republic of China; Sigma Designs, Inc., Milpitas, CA; Sasken Communication Technologies Limited, Bangalore, India; SKC Co., Ltd., Kyonggi-do, Republic of Korea; Skyworth (Group) Co., Ltd., Quarry Bay, Hong Kong-China; Silicon Magic Corporation, Sunnyvale, CA; Singhale Development Limited, Aberdeen, Hong Kong-China; Societe Nouvelle Areacem (S.N.A.), Tourouvre, France; Sony Corporation, Tokyo, Japan; Southern Star Duplitek Pty. Ltd., Alexandria, NSW, Australia; Spruce Technologies, Inc., San Jose, CA; Stream Machine Company, Milpitas, CA; Sun Microsystems Inc., Palo Alto, CA; Sunplus Technology Co., Ltd., Hsin-Chu, Taiwan; Sunchronicity Mastering Services LLC, Salt Lake City, UT; Tae Kwang Industrial Co., Ltd., Gyonggi-Do, Republic of Korea; TAG McLaren Audio Limited, Huntingdon, Cambridgeshire, United Kingdom; Takaya Corporation, Okayama, Japan; Tatung Co., Taipei, Taiwan; TBS Service, Inc., Tokyo, Japan; TEAC Corporation, Tokyo, Japan; Shanghai Thakral Electronics Industrial Corporation Limited, Shanghai, People's Republic of China; Texas Instruments Japan Limited, Tokyo, Japan; The Video Duplicating Co. Ltd., Wembley, Middlesex, United Kingdom; Thomas Multimedia S.A., Boulogne Billancourt, France; Time Group Ltd, Burnley, Lancashire, United Kingdom; Tohei Industrial Co., Ltd., Fukushima-ken, Japan; Tonic Electronics Limited, Kowloon, Hong Kong-China; Toolex International N.V., Eindhoven, The Netherlands; Toppan Printing Co., Ltd., Tokyo, Japan; Toshiba Corporation, Tokyo, Japan; TriMedia Technologies, Inc., Milpitas, CA; Twentieth Century Fox Film Corporation, Beverly Hills, CA; Unidisc Technology Co., Ltd., Taipei Hsien, Taiwan; Universal Manufacturing & Logistics GmbH, Langenhagen, Germany; Universal City Studios, Inc., Universal City, CA; U-Tech Media Corp., Tau-Yuan Shien, Taiwan; Vestel Elektro nik VE Sanayi Ti car et A.S., Manisa, Turkey; VIA Technologies, Inc., Taipei, Taiwan; Victor Company of Japan, Limited, Yokohama, Japan; Videolar S/A, Alphaville-Barueri, Brazil; Vision Tech International Holdings Limited, Wan Chai, Hong Kong-China; Viva Magnetics Limited, Aberdeen, Hong Kong-China; Warner Bros, Burbank, CA; WEA Manufacturing Inc., Olyphant, PA; Winbond Electronics Corp., Hsinchu, Taiwan; Yamaha Corporation, Hamamatsu, Japan; Yuan High-Tech Development Co., Ltd., Taipei, Taiwan; Zen Research N.V., Curacao, Netherlands Antilles; and Zoran Corporation, Santa Clara, CA.

The nature and objectives of the venture are to provide an encryption technology designed to prevent unlawful or unauthorized copying by encrypting digital files that can be decrypted only on licensed equipment. DVD CCA also intends to research, evaluate, adopt and license related technologies designed to protect CSS against unauthorized or unlawful copying and to prevent the unauthorized or unlawful copying and to prevent the unauthorized playback of DVD discs. DVD CCA licenses Content Scramble System (''CSS'') technology to participants at various levels in the Digital Versatile Disk (''DVD'') industry.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 01–19392 Filed 8–2–01; 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: Fuel Filtration Cooperative R&D Program; Phase III

Notice is hereby given that, on June 8, 2001, pursuant to Section 6(a) of the National Cooperatiave Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute: Fuel Filtration Cooperative R&D Program—Phase III has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its area of planned activity and 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, the period of performance has been extended to December 31, 2001; and Fleetguard, Inc., Cookeville, TN is no longer a party 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 Southwest Research Institute: Fuel Filtration Cooperative R&D Program—Phase III intends to file additional written notification disclosing all changes in membership.

On March 1, 1999, Southwest Research Institute: Fuel Filtration Cooperative R&D Program—Phase III file its original notification pursuant to Section 6(a) of the Act. The Department of Justice a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 26, 1999 (64 FR 28521). A correction notice was published in the **Federal Register** on July 11, 2000 (65 FR 42727). The last notification was filed with the Department on July 30, 1999. A notice was published in the **Federal Register** on March 2, 2001 (66 FR 13083).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 01–19393 Filed 8–2–01; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Presidential Task Force on Employment of Adults With Disabilities (PTFEAD) Youth Advisory Committee; Notice of Establishment and Request for Nominations

*Establishment of advisory board:* This notice is published in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), and advises of the establishment of the PTFEAD Youth Advisory Committee. The Secretary of the Department of Labor (DOL), acting in her capacity as chair of the PTFEAD, has determined that the establishment of the Advisory Committee is in the public interest. In addition, the creation of the Advisory Committee is mandated pursuant to Executive Order 13078 as amended by Executive Order 13172 (October 25, 2000).

*Purpose of advisory board:* The Presidential Task Force on Employment of Adults with Disabilities was created in 1998 pursuant to Executive Order 13078. Its overall purpose is to develop a coordinated national strategy to ensure that people with disabilities are employed at a rate as close as possible to that of the general adult population. The committee's purpose is to provide, through the Task Force, advice and recommendations to the Secretary of Labor and her designees (including the Office of the 21st Century Workforce and the Office of Disability Employment

Policy) on issues that effect the employment of young people with disabilities. PTFEAD is seeking this type of input to ensure that its activities and policy recommendations respond to the needs of youth with disabilities.

*Nominations for Candidates:* At this time, the PTFEAD also requests nominations of candidates for membership on the Advisory Committee. Self-nomination is permissible. The Advisory Committee will consist of a balanced, culturally diverse group of approximately 15 young people, representing a variety of disabling conditions, localities, and viewpoints who will be appointed by the Secretary of Labor. Members must be between the ages of 14 and 28 and will serve from the date of their appointment until the expiration of the Task Force on July 26, 2002, unless otherwise extended. Criteria used to evaluate candidates will include relevant experience, and demonstrated leadership, knowledge, and commitment.

**DATES:** Nominations of candidates should be received by no later than September 14, 2001.

**ADDRESSES:** Submit nominations for the list of candidates to: Richard Horne, Senior Policy Analyst, Presidential Task Force on Employment of Adults with Disabilities, 200 Constitution Avenue, NW., Room S–2220, Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Richard Horne at the above address, or call 202–693–4939. The Task Force will not formally acknowledge or respond to nominations.

## Background

The Youth Advisory Committee will become operational when PTFEAD files copies of the Advisory Committee charter with appropriate committees of Congress and the Library of Congress. Copies of the charter are available upon request.

The function of the committee is to provide youth and young adult perspective to assist the Task Force in carrying out its mandate including providing recommendations to the Secretary of Labor and her designees (including the Office of the 21st Century Workforce and the Office of Disability Employment Policy) on ways of addressing, among other things, education, transition, health, rehabilitation, and independent living issues impacting the employment of young people with disabilities. The Advisory Committee will also provide insight on recommendations to be included in the Task Force's final report to the President.

## Participants

The committee shall have about 15 members; however, meetings generally will be open to all interested parties. The Chair of the National Council on Disability's Youth Advisory Committee will be invited to serve in a non-voting ex officio capacity. Committee members shall serve from the date of their appointment until July 26, 2002, the date the Task Force terminates unless otherwise extended. The Advisory Committee shall meet at least once per year. DOL will not compensate committee members for their service.

PTFEAD intends to hold the initial meeting of the Advisory Committee in the fall of 2001. Accordingly, nominations should be submitted to the Task Force no later than September 14, 2001.

## Nomination Procedures

Interested persons may nominate one or more qualified persons for membership on the committee. Self nominations are also accepted. A letter of nomination which identifies the name, age, address, and telephone number of the candidate should be submitted. A parental permission statement for nominees who are under the age of 18 will be necessary.

Signed in Washington, D.C., on the 25th day of July, 2001.

**Elaine L. Chao,**

*Secretary of Labor, Chair, Presidential Task Force on Employment of Adults with Disabilities.*

[FR Doc. 01–19402 Filed 8–2–01; 8:45 am]

BILLING CODE 4510–23–U

---

# DEPARTMENT OF LABOR

## Employment and Training Administration

## Workforce Investment Act; Migrant and Seasonal Farmworker Employment and Training Advisory Committee: Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) as amended, notice is hereby given of the scheduled meeting of the Migrant and Seasonal Farmworker Employment and Training Advisory Committee.

*Time and Date:* The meeting will begin at 9 a.m. on August 16, 2001, and continue until approximately 4:30 p.m., and will reconvene at 9 a.m. on August 17, 2001, and adjourn at close of business that day. Time is reserved from 1 p.m. to 2 p.m. on August 16, 2001, for participation and presentations by members of the public.

*Place:* U.S. Department of Labor, Frances Perkins Building, Room C–5525, Seminar Room 5, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

*Status:* The meeting will be open to the public. Individuals and representatives of organizations who are unable to attend, may submit a written statement. Written statements will be entered into the meeting record and presented to the Committee for discussion. Please keep written statements as brief as possible. To ensure the written statement is received in time to be taken to the meeting, the statement should be mailed to the contact person at least 6 days prior to the meeting. Persons with disabilities, who need special accommodations should contact the telephone number provided below no less than ten days before the meeting.

*Matters To Be Considered:* The agenda will focus on the following topics:

Brief report of meeting of September 18 & 19, 2000 (see 65 FSR 50029 August 15, 2000)
Election of Committee Chairperson and Vice Chairperson
National Farmworker Jobs Program Youth Evaluation
Workgroup Report
Public Comment Session

**FOR FURTHER INFORMATION CONTACT:** Alicia Fernandez-Mott, Chief, Division of Seasonal Farmworker Programs, Office of National Programs, Employment and Training Administration, Room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693–3729 (this is not a toll free number).

Signed at Washington, DC, this 26th day of July 2001.

**Shirley M. Smith,**

*Administrator, Office of Adult Services, Employment and Training Administration.*

[FR Doc. 01–19403 Filed 8–2–01; 8:45 am]

BILLING CODE 4510–30–M

---

# DEPARTMENT OF LABOR

## Employment Standards Administration; Wage and Hour Division

## Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study

of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

## Modification to General Wage Determination Decisions

The number of decisions listed to the Government Printing Office document entitled ''General Wage determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

Connecticut:
CT010001 (Mar. 02, 2001)
CT010002 (Mar. 02, 2001)
CT010003 (Mar. 02, 2001)
CT010004 (Mar. 02, 2001)

New Jersey:
NJ010002 (Mar. 02, 2001)
NJ010003 (Mar. 02, 2001)
NJ010005 (Mar. 02, 2001)
NJ010007 (Mar. 02, 2001)

New York:
NY010003 (Mar. 02, 2001)
NY010008 (Mar. 02, 2001)
NY010011 (Mar. 02, 2001)
NY010013 (Mar. 02, 2001)
NY010018 (Mar. 02, 2001)
NY010032 (Mar. 02, 2001)
NY010046 (Mar. 02, 2001)
NY010047 (Mar. 02, 2001)

*Volume II*

Pennsylvania:
PA010001 (Mar. 02, 2001)
PA010004 (Mar. 02, 2001)
PA010005 (Mar. 02, 2001)
PA010007 (Mar. 02, 2001)
PA010008 (Mar. 02, 2001)
PA010009 (Mar. 02, 2001)
PA010010 (Mar. 02, 2001)
PA010012 (Mar. 02, 2001)
PA010014 (Mar. 02, 2001)
PA010015 (Mar. 02, 2001)
PA010016 (Mar. 02, 2001)
PA010017 (Mar. 02, 2001)
PA010018 (Mar. 02, 2001)
PA010019 (Mar. 02, 2001)
PA010021 (Mar. 02, 2001)
PA010023 (Mar. 02, 2001)
PA010024 (Mar. 02, 2001)
PA010025 (Mar. 02, 2001)
PA010026 (Mar. 02, 2001)
PA010028 (Mar. 02, 2001)
PA010029 (Mar. 02, 2001)
PA010030 (Mar. 02, 2001)
PA010031 (Mar. 02, 2001)
PA010035 (Mar. 02, 2001)
PA010038 (Mar. 02, 2001)
PA010040 (Mar. 02, 2001)
PA010042 (Mar. 02, 2001)
PA010050 (Mar. 02, 2001)
PA010052 (Mar. 02, 2001)
PA010054 (Mar. 02, 2001)
PA010059 (Mar. 02, 2001)
PA010060 (Mar. 02, 2001)
PA010061 (Mar. 02, 2001)
PA010065 (Mar. 02, 2001)

*Volume III*

Alabama:
AL010003 (Mar. 02, 2001)
AL010008 (Mar. 02, 2001)

Florida:
FL010014 (Mar. 02, 2001)
FL010017 (Mar. 02, 2001)

*Volume IV*

Illinois:
IL010001 (Mar. 02, 2001)
IL010002 (Mar. 02, 2001)
IL010003 (Mar. 02, 2001)
IL010004 (Mar. 02, 2001)
IL010006 (Mar. 02, 2001)
IL010007 (Mar. 02, 2001)
IL010008 (Mar. 02, 2001)
IL010009 (Mar. 02, 2001)
IL010011 (Mar. 02, 2001)
IL010012 (Mar. 02, 2001)
IL010013 (Mar. 02, 2001)
IL010014 (Mar. 02, 2001)
IL010015 (Mar. 02, 2001)
IL010016 (Mar. 02, 2001)
IL010017 (Mar. 02, 2001)
IL010023 (Mar. 02, 2001)
IL010024 (Mar. 02, 2001)
IL010027 (Mar. 02, 2001)
IL010029 (Mar. 02, 2001)
IL010030 (Mar. 02, 2001)
IL010032 (Mar. 02, 2001)
IL010035 (Mar. 02, 2001)
IL010037 (Mar. 02, 2001)
IL010042 (Mar. 02, 2001)
IL010043 (Mar. 02, 2001)
IL010045 (Mar. 02, 2001)
IL010046 (Mar. 02, 2001)
IL010049 (Mar. 02, 2001)
IL010050 (Mar. 02, 2001)
IL010051 (Mar. 02, 2001)
IL010052 (Mar. 02, 2001)
IL010054 (Mar. 02, 2001)
IL010057 (Mar. 02, 2001)
IL010061 (Mar. 02, 2001)
IL010066 (Mar. 02, 2001)
IL010069 (Mar. 02, 2001)
IL010070 (Mar. 02, 2001)

*Volume V*

None

*Volume VI*

Alaska:
AK010001 (Mar. 02, 2001)
AK010002 (Mar. 02, 2001)
AK010005 (Mar. 02, 2001)
AK010006 (Mar. 02, 2001)
AK010008 (Mar. 02, 2001)

Idaho:
ID010001 (Mar. 02, 2001)
ID010002 (Mar. 02, 2001)

North Dakota:
ND010004 (Mar. 02, 2001)
ND010007 (Mar. 02, 2001)
Oregon:
OR010001 (Mar. 02, 2001)
OR010017 (Mar. 02, 2001)
Washington:
WA010001 (Mar. 02, 2001)
WA010002 (Mar. 02, 2001)
WA010004 (Mar. 02, 2001)
WA010005 (Mar. 02, 2001)
WA010007 (Mar. 02, 2001)
WA010008 (Mar. 02, 2001)
WA010011 (Mar. 02, 2001)

*Volume VII*

None

## General Wage Determination Publication

General Wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under The Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 26th day of July 2001.

**John Frank,**

*Acting Chief, Branch of Construction Wage Determination.*

[FR Doc. 01–19119 Filed 8–2–01; 8:45 am]

**BILLING CODE 4510–27–M**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. ICR–1218–0064(2001)]**

### OSHA–7 Form (''Notice of Alleged Safety and Health Hazards''); Extension of the Office of Management of Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

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

**ACTION:** Notice of an opportunity for public comment.

**SUMMARY:** OSHA solicits comments concerning its request to increase the existing burden-hour estimates for, and to extend OMB approval of, the information collection specified in the OSHA–7 Form.[1] Under paragraphs (a) and (c) of § 1903.11 (''Complaints by employees''), employees and their representatives must provide the Agency with specific, written information if they believe that OSHA-regulated hazards are present in their workplace; they may use the OSHA–7 Form for this purpose. Based on this information, the Agency determines whether or not reasonable grounds exist to conduct an inspection of the workplace; it also uses the information to assess the severity of the alleged hazards and the need to expedite the inspection. In addition, the form provides an employer with notice of the complaint, and may serve as the basis for obtaining a search warrant if an employer denies OSHA access to the workplace.

**DATES:** Submit written comments on or before October 2, 2001.

**ADDRESSES:** Submit written comments to the Docket Office, Docket No. ICR–1218–0064(2001), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

**FOR FURTHER INFORMATION CONTACT:** Thomas M. Galassi, Directorate of Compliance Programs, OSHA, U.S. Department of Labor, Room N–3603, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2100. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified in this notice is available for inspection and copying in the Docket Office or by requesting a copy from Thomas M. Galassi; for electronic copies of the ICR, contact OSHA on the Internet at http://www.osha.gov/comp-links.html, and select ''Information Collection Requests.''

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct. The Occupational Safety and Health Act of 1970 authorizes information collection by OSHA as necessary or appropriate for enforcement of the act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents. (29 U.S.C. 657.)

Under paragraphs (a) and (c) of § 1903.11 (''Complaints by employees''), employees and their representatives may notify the OSHA area director or an OSHA compliance officer of safety and health hazards regulated by the Agency that they believe exist in their workplaces. These provisions state further that this notification must be in writing and ''shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of the employees.''

Along with providing specific hazard information to the Agency, paragraph (a) permits employees/employee representatives to request an inspection of the workplace. Paragraph (c) also addresses situations in which employees/employee representatives may provide the information directly to the OSHA compliance officer during an inspection. An employer's former employees may also submit complaints to the Agency; these complaints account for 30-40% of all complaints received by the Agency. Subsequent discussions in this Supporting Statement will refer to current and former employees as ''complainants.''

[1] Based on its assessment of the OSHA–7 Form, the Agency estimates that the total burden hours increased compared to its previous burden-hour estimate. Under this Notice, OSHA is *not* proposing to revise the existing form or the regulation (§ 1903.11) that specifies the information-collection requirements addressed by the form.

To address the requirements of paragraphs (a) and (c), especially the requirement that the information be in writing, the Agency developed the OSHA–7 Form; this form standardized and simplified the hazard-reporting process. For paragraph (a), they may complete an OSHA–7 Form obtained from the Agency's website and then send it to OSHA on-line, or deliver a hardcopy of the form to the OSHA area office by mail or facsimile, or by hand. They may also write a letter containing the information and hand-deliver it to the area office, or sent it by mail or facsimile. In addition, they may provide the information orally to the OSHA area office or another party (e.g., a Federal safety and health committee for Federal employees), in which case the area office or other party completes the hardcopy version of the form. for the typical situation addressed by paragraph (c), an employee/employee representative informs an OSHA compliance officer orally of the alleged hazard during an inspection, and the compliance officer then completes the hardcopy version of the OSHA–7 Form; occasionally, the employee/employee representative provides the compliance officer with the information on the hardcopy version of the OSHA–7 Form.

The information in the hardcopy version of the OSHA–7 Form includes information about the employer and alleged hazards, including: The establishment's name, mailing address, and telephone and facsimile numbers; the site's address and telephone and facsimile numbers; the name and telephone number of the management official; the type of business; a description, and the specific location, of the hazards, including the approximate number of employees exposed or threatened by the hazards; and whether or not the employee/employee representative informed the employer or another government agency about the hazards (and the name of the agency if informed).

Additional information on the hardcopy version of the form addresses the complainant, including: Whether or not the complainant wants OSHA to reveal their name to the employer; whether the complainant is an employee or an employee representative, or, for information provided orally, a member of a Federal safety and health committee or another party (with space to specify the party); the complainant's name, telephone number, and address; and the complainant's signature attesting that they believe a violation of an OSHA standard exists at the named establishment; and the date of the signature. An employee representative must also provide the name of the organization they represent and their title.

The information contained in the on-line version of the OSHA–7 Form is similar to the hardcopy version. However, the on-line version requests the establishment's county location and the complainant's e-mail address, and does not ask for the establishment's and site's telephone and facsimile numbers and the complainant's signature and signature date.

The Agency uses the information collected on the OSHA–7 Form to determine whether or not reasonable grounds exist to conduct an inspection of the workplace. The description of the hazards, including the number of exposed employees, allows the Agency to assess the severity of the hazards and the need to expedite the inspection. The completed form also provides an employer with notice of the complaint and may serve as the basis for obtaining a search warrant if an employer denies the Agency access to the workplace.

## II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collection; and
- Ways to minimize the burden; for example, by using automated or other technological information-collection and -transmission techniques.

## III. Proposed Actions

OSHA is requesting an increase in the existing burden-hour estimate for, as well as an extension of OMB approval of, the OSHA–7 Form. Accordingly, the Agency is asking to increase the current total burden-hour estimate from 8,155 hours to 14,819 hours, an increase of 6,664 hours. This increase largely occurred because the number of complaints received each year by OSHA increased from 28,713 to 55,130. The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend its approval of these information-collection requirements.

*Type of Review:* Extension of currently approved information-collection requirements.

*Title:* OSHA–7 Form (''Notice of Alleged Safety and Health Hazards'').

*OMB Number:* 1218–0064 (2001).

*Affected Public:* Individuals or households.

*Number of Respondents:* 55,130.

*Frequency of Response:* On occasion.

*Average Time per Response:* Varies from 15 minutes (.25 hours) to communicate the required information orally to the Agency to 25 minutes (.42 hour) to provide the information in writing and send it to OSHA.

*Estimated Total Burden Hours:* 14,819.

*Estimated Cost (Operation and Maintenance):* $882.

## IV. Authority and Signature

R. Davis Layne, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Signed at Washington, DC on July 31, 2001.

**R. Davis Layne,**

*Acting Assistant Secretary of Labor.*

[FR Doc. 01–19546 Filed 8–2–01; 8:45 am]

BILLING CODE 4510–26–M

---

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**[Exemption Application No. D–10876, et al.]**

### Prohibited Transaction Exemption 2001–23; Grant of Individual Exemptions; Retirement Plan of Plumbers and Steamfitters Local No. 489 of Cumberland, MD (the Plan) et al.

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications

for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

**Statutory Findings**

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

**Retirement Plan of Plumbers and Steamfitters Local No. 489 of Cumberland, Maryland (the Plan) Located in Cumberland, Maryland**

[Prohibited Transaction Exemption No. 2001–23; [Application No. D–10876]

*Exemption*

The restrictions of sections 406(a) and 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 sale (the Sale) of certain real property (the Property) to the Plan by the Plumbers and Steamfitters Local No. 489 (the Union), a party in interest with respect to the Plan. This exemption is conditioned upon the adherence to the material facts and representations described herein and upon the satisfaction of the following requirements:

(a) The terms and conditions of the transaction are no less favorable to the Plan than those which the Plan would receive in an arm's-length transaction with an unrelated party;

(b) The Sale is a one-time transaction for cash;

(c) The Plan incurs no expenses from the Sale;

(d) The Plan pays the lesser of $100 or the fair market value of the Property; and

(e) An independent fiduciary will approve and enforce the terms of the transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on April 16, 2001 at 66 FR 19532.

*For Further Information Contact:* Khalif Ford of the Department, telephone (202) 219–8883 (this is not a toll-free number).

**ATGI 401(k) Plan (the Plan) Located in Houston, Texas**

[Prohibited Transaction Exemption No. 2001–24; [Application No. D–10970]

*Exemption*

The restrictions of sections 406(a) and 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 effective November 30, 2000 to: (1) The acquisition of Stock Rights (the Stock Rights) by the Plan in connection with a Stock Rights offering by Alpha Technologies Group, Inc. (ATGI); (2) the holding of the Stock Rights by the Plan during the subscription period of the offering; and (3) the disposition or exercise of the Stock Rights by the Plan. This exemption is conditioned upon the adherence to the material facts and representations described herein and upon the satisfaction of the following requirements:

(a) The Stock Rights were acquired pursuant to Plan provisions for individually-directed investment of such accounts;

(b) The Plan's receipt of the Stock Rights occurred in connection with a Stock Rights offering made available to all shareholders of common stock of ATGI;

(c) All decisions regarding the holding and disposition of the Stock Rights by the Plan were made, in accordance with the Plan provisions for individually-directed investment of participant accounts, by the individual Plan participants whose accounts in the Plan received Stock Rights in connection with the offering;

(d) The Plan's acquisition of the Stock Rights resulted from an independent act of ATGI as a corporate entity, and all holders of the Stock Rights, including the Plan, were treated in the same manner with respect to the acquisition; and

(e) The price received by the Plan for the Stock Rights was no less than the fair market value of the Stock Rights on the date of the offering.

*Effective Date:* This exemption is effective as of November 30, 2000.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on June 4, 2001 at 66 FR 30014.

*For Further Information Contact:* Khalif Ford of the Department, telephone (202) 219–8883 (this is not a toll-free number).

**The Joliet Medical Group, Ltd. Employees Retirement Plan & Trust (the Plan) Located in Joliet, Illinois**

[Prohibited Transaction Exemption No. 2001–25; [Application D–10990]

*Exemption*

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 effective November 1, 1999 to the past and continued leasing of a medical clinic (the Property) located at 2100 Glenwood Ave., Joliet, Illinois, from the Plan to Joliet Medical Group, Ltd. (the Employer). This exemption is conditioned upon the adherence to the material facts and representations described herein and upon the satisfaction of the following requirements:

(a) The independent fiduciary has determined that the transaction is feasible, in the interest of, and protective of the Plan;

(b) The fair market value of the Property has not exceeded and will not exceed twenty percent (20%) of the value of the total assets of the Plan;

(c) The independent fiduciary has negotiated, reviewed, and approved the terms of the lease of the Property with the Employer;

(d) The terms and conditions of the lease of the Property with the Employer have been and will continue to be no less favorable to the Plan than those obtainable by the Plan under similar circumstances when negotiated at arm's length with unrelated third parties;

(e) An independent qualified appraiser has determined the fair market rental value of the Property;

(f) The independent fiduciary has monitored and will continue to monitor compliance with the terms of the lease of the Property to the Employer throughout the duration of such lease and is responsible for legally enforcing the payment of the rent and the proper performance of all other obligations of the Employer under the terms of the lease on the Property; and

(g) The Plan has not incurred and will not incur any fees, costs, commissions, or other charges or expenses as a result of its participation in the transaction, other than the fee payable to the independent fiduciary.

*Effective Date:* This exemption is effective as of November 1, 1999.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on June 4, 2001 at 66 FR 30018.

*For Further Information Contact:* Khalif Ford of the Department, telephone (202) 219–8883 (this is not a toll-free number).

**ACE Business Travel Accident Plan (the Plan) Located in Philadelphia, Pennsylvania**

[Prohibited Transaction Exemption 2001–26; Exemption Application No. L–10955]

*Exemption*

The restrictions of sections 406(a) and (b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by ACE American Insurance Company (ACE USA) from the insurance contracts sold by Life Insurance Company of North America (CIGNA) or any successor company to CIGNA which is unrelated to ACE INA Holdings, Inc. (ACE INA), to provide accidental death and dismemberment benefits to participants in the Plan, provided the following conditions are met:

(a) ACE USA—

(1) Is a party in interest with respect to the Plan by reason of a stock or partnership affiliation with ACE INA that is described in section 3(14)(E) or (G) of the Act,

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one State as defined in section 3(10) of the Act,

(3) Has obtained a Certificate of Authority from the Insurance Commissioner of its domiciliary state which has neither been revoked nor suspended, and

(4)(A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or

(B) Has undergone a financial examination (within the meaning of the law of its domiciliary State, Pennsylvania) by the Insurance Commissioner of the Commonwealth of Pennsylvania within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred.

(b) The Plan pays no more than adequate consideration for the insurance contracts;

(c) No commissions are paid with respect to the direct sale of such contracts or the reinsurance thereof;

(d) The Plan only contracts with insurers with a rating of A or better from A.M. Best Company. The reinsurance arrangement between the insurers and ACE USA will be indemnity insurance only, i.e., the insurer will not be relieved of liability to the Plan should ACE USA be unable or unwilling to cover any liability arising from the reinsurance arrangement; and

(e) For each taxable year of ACE USA, the gross premiums and annuity considerations received in that taxable year by ACE USA for life and health insurance or annuity contracts for all employee benefit plans (and their employers) with respect to which ACE USA is a party in interest by reason of a relationship to such employer described in section 3(14)(E) or (G) of the Act does not exceed 50% of the gross premiums and annuity considerations received for all lines of insurance (whether direct insurance or reinsurance) in that taxable year by ACE USA. For purposes of this condition (e):

(1) The term ''gross premiums and annuity considerations received'' means as to the numerator the total of premiums and annuity considerations received, both for the subject reinsurance transactions as well as for any direct sale or other reinsurance of life insurance, health insurance or annuity contracts to such plans (and their employers) by ACE USA. This total is to be reduced (in both the numerator and the denominator of the fraction) by experience refunds paid or credited in that taxable year by ACE USA; and

(2) All premium and annuity considerations written by ACE USA for plans which it alone maintains are to be excluded from both the numerator and the denominator of the fraction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 4, 2001 at 66 FR 30019.

*For Further Information Contact*: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions 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) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 31st day of July, 2001.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 01–19490 Filed 8–2–01; 8:45 am]

BILLING CODE 4510–29–P

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**[Application No. D–10940, et al.]**

### Proposed Exemptions; Principal Mutual Holding Company (PMHC) 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.

### Principal Mutual Holding Company (PMHC), Located in Des Moines, IA

[Application No. D–10940]

### 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).[1]

### Section I. Covered 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 (1) the receipt of shares of common stock (Common Stock) issued by Principal Financial Group, Inc. (PFG), the successor entity to PMHC,[2] or (2) the receipt of cash (Cash) or policy credits (Policy Credits) by any eligible policyholder (the Eligible Policyholder) of Principal Life Insurance Company (Principal), a subsidiary of PMHC, which is an employee benefit plan (the Plan), including a Plan sponsored by Principal and its affiliates (the Principal Plan), in exchange for such Eligible Policyholder's mutual membership interest in PMHC, pursuant to a plan of conversion (the Plan of Conversion) adopted by PMHC and implemented in accordance with Iowa Insurance Law.

In addition, the restrictions of section 406(a)(1)(E) and (a)(2) and section 407(a)(2) of the Act shall not apply to the receipt and holding, by a Principal Plan, of Common Stock, whose fair market value exceeds 10 percent of the value of the total assets held by such Plan.

The proposed exemption is subject to the general conditions set forth below in Section II.

### Section II. General Conditions

(a) The Plan of Conversion is implemented in accordance with procedural and substantive safeguards that are imposed under Iowa Insurance Law and is subject to review and approval by the Iowa Commissioner of Insurance (the Commissioner).

(b) The Commissioner reviews the terms of the options that are provided to Eligible Policyholders of PMHC as part of such Commissioner's review of the Plan of Conversion, and only approves the Plan following a determination that such Plan is fair and equitable to all Eligible Policyholders. The New York Superintendent of Insurance (the Superintendent) may object to the Plan of Conversion if he or she finds that such Plan of Conversion is not fair and equitable to all Eligible Policyholders.

(c) As part of their separate determinations, both the Commissioner and the Superintendent concur on the terms of the Plan of Conversion.

(d) Each Eligible Policyholder has an opportunity to vote at a special meeting to approve the Plan of Conversion after receiving full written disclosure from PMHC and/or Principal.

(e) One or more independent fiduciaries of a Plan that is an Eligible Policyholder elects to receive Common Stock, Cash or Policy Credits pursuant to the terms of the Plan of Conversion and neither PMHC nor any of its affiliates exercises any discretion or provides ''investment advice,'' within the meaning of 29 CFR 2510.3–21(c) with respect to such acquisition.

(f) If Policy Credits are elected by a Plan policyholder holding a group annuity contract, the policyholder may elect to have the policy value increased by the amount of compensation allocated or to have the policy enhanced with an interest in a separate account

[1] For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

[2] For purposes of this proposed exemption, references to PMHC will generally include references to PFG unless noted, or unless the context requires otherwise.

(the Separate Account), which is maintained by Principal.

(1) If no election is made by a Plan policyholder, the ''default'' consideration for the policyholder is Policy Credits (in the form of an interest in the Separate Account), unless the contract or regulatory concerns preclude this form of compensation.

(2) Principal allocates the Policy Credit compensation received, on a *pro rata* basis, among the participants of the Plan that is invested in the Separate Account, in accordance with their account balances, unless the policyholder directs otherwise, and neither PMHC nor its affiliates provides investment advice or recommendations to the policyholder on which option to choose or with respect to the default consideration, in the event no choice is made.

(3) No purchases or sales of assets are made between Principal or its affiliates and the Separate Account.

(4) Upon receiving a notice of withdrawal from a Plan policyholder, Northern Trust Company (NTC), the custodian for shares of Common Stock that are held in the Separate Account, sells such shares of Common Stock on the open market at fair market value.

(5) Northern Trust Investments, Inc. (NTI), the independent trustee for the Separate Account, (i) votes at the direction of the Plan policyholders on routine matters (e.g., the appointment of accountants); (ii) in the absence of receiving Plan policyholder direction, causes the affected shares in the Separate Account to be voted in the same proportion as shares for which specific instructions have been received from other Plans holding interests in the Separate Account; and (iii) exercises discretion on major issues (e.g., proxy contests) involving the Separate Account.

(g) In the case of a Principal Plan, U.S. Trust, N.A. (U.S. Trust), the independent fiduciary appointed to represent the Principal Plans—

(1) Votes on whether to approve or not to approve the proposed demutualization;

(2) Elects between consideration in the form of Common Stock, Cash or Policy Credits on behalf of such Plans;

(3) Determines how to apply the Common Stock, Cash or Policy Credits received for the benefit of the participants and beneficiaries of the Principal Plans;

(4) Votes on shares of Common Stock that are held by the Principal Plans and disposes of such stock held by a Plan exceeding the limitation of section 407(a)(2) of the Act as soon as it is reasonably practicable, but in no event later than six months after the Effective Date of the Plan of Conversion;

(5) Provides the Department with a complete and detailed final report as it relates to the Principal Plans prior to the Effective Date of the demutualization; and

(6) Takes all actions that are necessary and appropriate to safeguard the interests of the Principal Plans and their participants and beneficiaries.

(h) Each Eligible Policyholder entitled to receive Common Stock is allocated at least 100 shares and additional consideration is allocated to Eligible Policyholders who own participating policies based on actuarial formulas that take into account each participating policy's contribution to the surplus of Principal, which formulas have been reviewed by the Commissioner.

(i) All Eligible Policyholders that are Plans participate in the demutualization on the same basis and within their class groupings as other Eligible Policyholders that are not Plans.

(j) No Eligible Policyholder pays any brokerage commissions or fees in connection with the receipt of the demutualization consideration.

(k) All of Principal's policyholder obligations remain in force and are not affected by the Plan of Conversion.

(l) The terms of the transactions are at least as favorable to the Plans as an arm's length transaction with an unrelated party.

**Section III. Definitions**

For purposes of this proposed exemption:

(a) The term ''PMHC'' means Principal Mutual Holding Company, its successor in interest, Principal Financial Group, Inc. and any of their affiliates as defined in paragraph (b) of this Section III, unless noted, or unless the context requires otherwise.

(b) An ''affiliate'' of PMHC includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with PMHC (For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.); and

(2) Any officer, director or partner in such person.

(c) The ''Effective Date'' refers to the date on which the closing of the initial public offering (the IPO) occurs, which will be a date occurring after the approval of the Plan of Conversion by voting policyholders and the Commissioner, provided that in no event will the Effective Date be more than 12 months after the date on which the Commissioner has approved or has conditionally approved the Plan of Conversion, unless such period is extended by the Commissioner. The Plan of Conversion will be deemed to become effective at 12:01 a.m., Central Time, on the Effective Date.

(d) The term ''Record Date'' means the date that is one year prior to the Adoption Date.

(e) The ''Adoption Date'' refers to the date that PMHC's Board of Directors adopted the Plan of Conversion. This date was March 31, 2001.

(f) The term ''Eligible Policyholder'' means a person who, on the Record Date, is the owner of one or more policies and who, as reflected in PMHC's or Principal Life's records, has a continuous membership interest in PMHC through ownership of one or more policies from the Record Date until and on the Effective Date. Members of PMHC who were issued policies before April 8, 1980 and transferred ownership rights of such policies on or before April 8, 1980 are Eligible Policyholders so long as such policies remain in force on the Record Date.

(g) The term ''Policy Credit'' means consideration to be paid in the form of an increase in cash value, account value, dividend accumulations, face amount, extended term period or benefit payment, as appropriate, depending upon the policy. If the policy is owned by a qualified plan customer (the Qualified Plan Customer) [i.e., an owner of a group annuity contract issued by Principal, which contract is designed to fund benefits under a retirement plan which is qualified under section 401(a) and section 403(a) of the Code (including a plan covering employees described in section 401(c) of the Code, provided such plan meets the requirements of Rule 180 promulgated under the Securities Exchange Act of 1933, as amended) or which is a governmental plan described in section 414(d) of the Code, excluding (1) group annuity contracts that fund only guaranteed deferred annuities or annuities in the course of payments and (2) group annuity contracts for which Principal does not perform retirement plan recordkeeping services and whose group annuity contracts do not provide for investments in Principal's pooled unregistered separate accounts], the Policy Credit may take the form of a Separate Account Policy Credit or an Account Value Policy Credit. If the policy is owned by a Non-Rule 180 Qualified Plan Customer, the Policy Credit will take the form of an Account Value Policy Credit.

**Summary of Facts and Representations**

*The Parties*

1. PMHC, a mutual insurance holding company organized under Iowa law, maintains its principal place of business at 711 High Street, Des Moines, Iowa. Its indirect subsidiary, Principal, is authorized to sell life and health insurance policies throughout the United States. Specifically, Principal provides group annuities and group life and health insurance to employers and life insurance and annuities to individuals.[3] As of December 31, 1999, Principal had total assets of approximately $82 billion (on a statutory accounting basis) and had more than $163 billion of life insurance in force. In addition, Principal has received the following financial strength ratings from firms which specialize in assessing insurance companies' performance: an ''A+'' (or Superior) rating from the A.M. Best Company, as of November 1999; an ''AA+'' (or Very High) rating from Fitch, as of June 2000; an ''Aa2'' (or Excellent) rating from Moody's Investors Service, as of June 2000; and an ''AA'' (or Very Strong) rating from Standard & Poor's, as of July 2000.

2. As a mutual holding company, PMHC does not have capital stock. Instead, it has members who are owners of policies and contracts issued by Principal. PMHC was organized in 1998 as a part of the conversion of Principal Mutual Life Insurance Company, then an Iowa mutual life insurance company, to a stock life insurance company subsidiary indirectly owned by a mutual insurance holding company under a plan of reorganization approved by the Commissioner and by the members of Principal Mutual Life Insurance Company.[4] As required under Section 521A.14 of the Iowa Code, and as provided in such plan of reorganization, Principal policyholders ceased to have membership interests in Principal and became members of PMHC instead.

A policyholder's membership interest in PMHC includes the right to vote, and to participate in the distribution of PMHC's surplus in the event of PMHC's voluntary dissolution or liquidation. Each member has one vote.

3. Pursuant to Section 521A.14(5) of the Iowa Code, PMHC is treated as a mutual entity and may be converted to a stock company (i.e., demutualized) under Chapter 508B of the Iowa Code, the same statutory provisions that govern the demutualization of mutual life insurance companies. In the event of such a demutualization, Eligible Policyholders may receive consideration in the form of stock, cash, or such other consideration permitted under Section 508B.3 of the Iowa Code and approved by the Commissioner. A demutualization will not affect the rights of Principal policyholders under their insurance and annuity contracts.

4. Principal provides a variety of insurance products to ERISA-covered employee benefit plans and to other plans described in section 4975(e)(1) of the Code. Principal has actively marketed its products to Plans, and had, as of December 31, 1999, approximately 44,000 in force policies and contracts held on behalf of employee pension and profit sharing (including section 401(k) plans) and over 92,000 contracts providing welfare benefit plan coverage such as group life, short-and long-term disability, accidental death and dismemberment, and group health coverage.

In addition, Principal provides certain administrative services and recordkeeping services to many of the pension and profit sharing plans. These services include the preparation of required tax forms, tracking of contributions made to the various plans, provision of prototype plan documents, and providing testing services to ensure plan compliance with Code requirements. Although Principal is not a party in interest with respect to any of its Plan policyholders merely because it has issued an insurance policy to such Plans, its provision of the foregoing services to the Plans may cause it to be considered a party in interest under section 3(14)(A) and (B) of the Act.

5. Besides issuing insurance policies and providing services to certain client Plans, Principal and its subsidiaries sponsor several pension and welfare benefit plans which are expected to receive consideration in connection with the Plan of Conversion described herein. A description of each of the affected Principal Plans is summarized in the following table:

| Name of plan and type | Approximate number of participants (as of 10/10/00) | Total assets (as of 12/31/00) | Coverage |
|---|---|---|---|
| The Principal Welfare Benefit Plan for Employees (Welfare). | 13,468 | $95,101,000 | Employees of Principal and its affiliates*. |
| The Principal Long Term Disability Plan for Employees (Welfare). | 11,276 | 6,707,000 | Employees of Principal and its affiliates*. |
| The Principal Welfare Benefit Plan for Individual Field (Welfare). | 1,239 | 51,551,000 | Agents, Managers, Brokerage General Agents and Managing Directors. |
| The Principal Long Term Disability Plan for Individual Field (Welfare). | 1,042 | 2,483,000 | Agents, Field Managers, Brokerage General Agents and Managing Directors. |
| The Principal Welfare Benefit Plan for Select Subsidiaries Field (Welfare). | 605 | 0 | Employees of Two Principal Affiliates. |
| The Principal Pension Plan (Defined Benefit) ..... | 18,932 | 989,797,000 | Employees of Principals and Its Affiliates*. |
| The Principal Select Savings Plan for Employees (Defined Contribution). | 17,398 | 524,017,000 | Employees of Principal and Its Affiliates*. |
| The Principal Select Savings Plan for Agents, General Managers and Management Assistants (Defined Contribution). | 1,921 | 114,358,000 | Agents, Field Managers and Their Assistants |
| Principal Health Care, Inc. Select Savings Plan (Defined Contribution)*. | 0 | 0 | Employees of Principal Health Care, Inc. |
| | 989,797,000<br>524,017,000 | | |

[3] Principal was originally organized in 1879 as Bankers Life Association (Bankers Life). On October 26, 1911, Bankers Life was converted to a mutual company called ''Bankers Life Company.'' In 1986, Bankers Life changed its name to ''Principal Mutual Life Insurance Company.'' In 1998, Principal was converted to a stock company called ''Principal Life Insurance Company.'' All of the stock of Principal is owned indirectly by PMHC.

[4] At the time of the 1998 conversion, no demutualization consideration was issued to policyholders who were previously mutual members of Principal Mutual Life Insurance Company.

| Name of plan and type | Approximate number of participants (as of 10/10/00) | Total assets (as of 12/31/00) | Coverage |
|---|---|---|---|
| Principal Health Care, Inc. Pension Plan (Defined Benefit)*. | 0 | 0 | Employees of Principal Health Care, Inc. |

* These Plans were terminated by Principal in 1998, so that as of December 31, 2000, each Plan had no assets or participants. Single premium annuity contracts were purchased to fund benefits for participants at the time of each Plan's termination. The single premium contracts may receive demutualization consideration.

Each of the Principal Plans has three trustees, all of whom are officers of Principal. Investment decisions for each Principal Plan are made by the Pension Plan Investment Committee, whose members also consist of officers of Principal and its affiliates.

*The PMHC Restructuring*

6. On August 21, 2000, PMHC's Board of Directors authorized PMHC's management to develop a plan of demutualization (i.e., the Plan of Conversion) pursuant to which PMHC will be converted from a mutual holding company to a stock holding company. Currently, PMHC owns Principal Financial Group, Inc. (PFG), which owns all of the stock of Principal Financial Services Inc. (PFS). These two subsidiaries will be merged and the surviving company will be PFS. After PMHC is converted into a stock company, it will be merged with and into PFS, which, in turn, will merge into PFG, a publicly-traded holding company whose common stock will be distributed to Eligible Policyholders and listed on the New York Stock Exchange. Principal will then be a wholly owned subsidiary of PFG.

As part of the demutualization process, Eligible Policyholders of Principal will receive Common Stock of PFG, or, in certain cases, Cash or Policy Credits. In return for such consideration, the membership interests and rights in surplus of the Principal policyholders will be extinguished.

7. An IPO, in which shares of Common Stock will be sold for cash, is expected to occur on the Effective Date of the demutualization. Under such circumstances, PFG will contribute a portion of the proceeds from the IPO to Principal, within a reasonable period of time after receipt, in an amount at least equal to the amount needed by Principal to fund the payment and crediting (by Principal) of mandatory Cash payments and Policy Credits to Eligible Policyholders, including the expenses of the restructuring that will be borne by Principal and allocated to PFG.

8. PMHC represents that the environment in which Principal operates has changed in a number of ways since the mutual insurance holding company structure was adopted in 1998. For example, the passage of the Gramm-Leach-Bliley Act in 1999 has increased the number, size and financial strength of Principal's potential competitors. Moreover, PMHC points out that because other life insurance companies of Principal's size have not adopted the mutual insurance holding company structure, there is uncertainty about the receptivity and valuation of the stock offered to the public by a company with this structure. While Principal is presently financially stronger than it has been in the past, PMHC states that this strength has led the PMHC's Board of Directors and PMHC's management to conclude that achievement of the organization's strategy will be enhanced through a demutualization.

PMHC represents that the flexibility to raise additional capital and diversify into global financial services is maximized in a demutualization. In this regard, a demutualization will benefit Principal's policyholders by increasing the company's financial resources and its ability to invest in new technology, products and markets and improved customer service. In addition, PMHC states that the conversion will provide Eligible Policyholders with an opportunity to receive shares of Common Stock, Cash or Policy Credits in exchange for their illiquid membership interests, which will be extinguished in the conversion. Further, PMHC explains that Eligible Policyholders will realize economic value from their membership interests that is not currently available to them so long as the company remains a mutual insurance company. Finally, PMHC states that all of Principal's policyholder obligations will remain in force and will not be affected by the Plan of Conversion.

9. Accordingly, PMHC requests an administrative exemption from the Department which, if granted, will permit the receipt of Common Stock, Cash, or Policy Credits, by an Eligible Policyholder that is a Plan, including a Principal Plan,[5] in exchange for Eligible Policyholder's membership interest in PMHC, in accordance with the terms of the Plan of Conversion adopted by PMHC and implemented pursuant to Section 521A.14(5)(b) and Chapter 508B of Title XIII of the Code of Iowa (1999).

PMHC represents that the receipt of the demutualization consideration pursuant to the Plan of Conversion by an Eligible Policyholder which is a Plan may be viewed as a prohibited sale or exchange of property between the Plan and Principal or PMHC in violation of section 406(a)(1)(A) of the Act. Moreover, PMHC states that the transaction may also be construed as a transfer of plan assets to, or a use of plan assets by or for the benefit of, a party in interest in violation of section 406(a)(1)(D) of the Act.

In addition to the above, PMHC is requesting that the exemption apply, for a period of up to 6 months following the Effective Date, to the holding, by a Principal Plan, of Common Stock whose fair market value exceeds 10 percent of the Principal Plan's assets, in violation of sections 406(a)(1)(E) and (a)(2) and 407(a)(2) of the Act.[6]

[5] PMHC represents that is aware that the Common Stock would constitute ''qualifying employer securities'' within the meaning of section the meaning of section 407(d)(5) of the Act, and that section 408(e) of the Act would apply to such distributions. Nevertheless, PMHC has specifically requested that the exemption apply to the receipt of Common Stock by an of the Principal Plans, if applicable, regardless of the ability by such Plan to utilize section 408(e) of the Act. (The Department, however, expresses no opinion herein on whether the Common Stock would constitute a ''qualifying employer security'' within the meaning of section 407(d)(5) of the Act and whether section 408(e) of the Act would apply to such distributions.) PMHC believes that this expanded type of exemptive relief will provide the greatest flexibility for U.S. Trust, the independent fiduciary for the Principal Plans, to select suitable types of consideration.

[6] Section 406(a)(1)(E) of the Act prohibits the acquisition by a plan of any employer security which would be in violation section 407(a) of the Act. Section 406(a)(2) of the Act states that no fiduciary who has authority or discretion to control the assets of a plan shall permit the plan to hold any employer security if he [or she] knows that holding such security would violate section 407(a) of the Act. Section 407(a)(1) of the Act prohibits the acquisition by a plan of any employer security which is not a qualifying employer security. Section 407(a)(2) of the Act provides that a plan may not acquire any qualifying employer security, if immediately after such acquisition, the aggregate fair market value of such securities exceeds 10 percent of the fair market value of the plan's assets.

In addition to the above, section 407(f) of the Act, which is applicable to the holding of a qualifying

Continued

The proposed exemption is conditioned upon a number of substantive safeguards. Among the safeguards is the requirement that distributions to Plans pursuant to the exemption must be on terms no less favorable to the Plans than Eligible Policyholders that are not Plans. In this regard, Plans that are Eligible Policyholders must participate in the demutualization transaction on the same basis and within their class groupings as Eligible Policyholders that are not Plans.

In addition, to represent the interests of the Principal Plans with respect to such activities as voting, the election of demutualization consideration, or the disposition of Common Stock, PMHC has retained U.S. Trust, to act as the independent fiduciary.

*Procedural Requirements Under Iowa Law for Restructuring*

10. Pursuant to Section 521A.14(5)(b) of the Iowa Code, PMHC, as a mutual insurance holding company, is treated, under Iowa Insurance Law, as a mutual life insurance company for purposes of demutualization and is, thus, subject to the demutualization provisions of Chapter 508B of the Iowa Code. Chapter 508B, which applies to the Plan of Conversion, sets forth procedural and substantive requirements to ensure that the restructuring will be fair and equitable to all Principal policyholders. In this regard, Section 508B.2 of the Iowa Code generally provides that a mutual life insurance company may become a stock life insurance company under a plan of conversion established and approved in the manner provided by Chapter 508B. Section 508B.2 and Section 508B.3 also provide that, in lieu of selecting a plan of conversion provided for in Chapter 508B, a mutual company may convert to a stock company pursuant to a plan approved by the Commissioner. The restructuring of PMHC will be conducted pursuant to these latter provisions.

Under Section 508B.3 of the Iowa Code, the Commissioner must determine the fairness and equity of a plan of conversion with respect to policyholders of a company undergoing demutualization. More specifically, Section 508B.7 of the Iowa Code requires that the Commissioner review the plan of conversion to determine whether it complies with all provisions of law and is fair and equitable to the mutual company and its policyholders and whether the reorganized company will have the amount of capital and surplus deemed by the Commissioner to be reasonably necessary for its future solvency. Additionally, this provision permits the Commissioner to order a hearing on the fairness and equity of the terms of the plan of conversion after giving written notice of the hearing to the mutual company, its policyholders, and other interested persons, all of whom have a right to appear at the hearing.

Section 508B.6 of the Iowa Code requires that a plan of conversion be approved by two-thirds of the policyholders of the mutual company who vote on it.[7] The statute requires notice to be given to the policyholders and permits voting by ballot, in person, or by proxy. The notice of meeting and election must contain a copy of the plan of conversion or a summary of the plan of conversion.

Finally, Section 508B.9 of the Iowa Code provides that, after the plan of conversion has been approved by the Commissioner and the policyholders, the reorganized company will be a continuation of the mutual company and that the conversion will not annul or modify any of the mutual company's existing suits, contracts, or liabilities except as provided in the plan of conversion. Furthermore, all rights, franchises, and interests of the mutual company in and to property, assets, and other interest will be transferred to and vest in the reorganized company, and the reorganized company will assume all obligations and liabilities of the mutual company.

11. Consistent with the requirements of Chapter 508B, the Plan of Conversion adopted by PMHC provides for PMHC to file an application with the Commissioner under Section 508B.2 of the Iowa Code to reorganize as a stock holding company. The Commissioner will hold a public hearing on the fairness and equity of the terms of the Plan of Conversion and on whether PMHC will have the amount of capital and surplus necessary for its future solvency. The Plan of Conversion also provides for PMHC members to be able to comment on the Plan of Conversion at the hearing, for the voting policyholders to vote on the Plan of Conversion at a members' meeting and for PMHC to provide notice to its voting policyholders of both the public hearing and the members' meeting.

It is anticipated that the Commissioner will engage the services of experts (e.g., actuaries, investment bankers and outside counsel) to assist in determining whether the Plan of Conversion meets the requirements of the law. In this regard, the Commissioner has retained the law firm of Baker & Daniels as legal counsel, Arthur Andersen as actuarial advisors and The Blackstone Group as financial advisors.

A final order by the Commissioner to approve an application pursuant to the Iowa demutualization statute is subject to judicial review in the Iowa courts in accordance with the Iowa Administrative Procedure Act, Chapter 17A, Iowa Code.

In addition to the Iowa regulatory requirements, PMHC has agreed to file a copy of the Plan of Conversion with the New York Superintendent of Insurance.[8] The Superintendent may object to the Plan of Conversion if he finds that it is not fair and equitable to New York Eligible Policyholders. If the Superintendent opines unfavorably on the Plan of Conversion, PMHC, as a practical matter, would either amend the Plan of Conversion or work out a satisfactory solution with the Superintendent. If the Superintendent were to require changes unacceptable to the Commissioner, PMHC would, have to work with both regulators to arrive at a satisfactory solution.

PMHC's Plan of Conversion was adopted by its Board of Directors on

employer security by a plan other than an eligible individual account plan, requires that (a) immediately following its acquisition by a plan, no more than 25 percent of the aggregate amount of stock of the same class issued and outstanding at the time of acquisition is held by the plan; and (b) at least 50 percent of the stock be held by persons who are independent of the issuer. PMHC has confirmed to the best of its knowledge that none of the shares of Common Stock which are issued to the Principal Plans will violate the provisions of section 407(f) of the Act.

[7] In this regard, Section 508B.4 of the Iowa Code defines the class of policyholders entitled to receive notice and to vote on the plan of conversion as generally including policyholders whose policies or contracts are in force on the date of adoption of the plan of conversion.

[8] Specifically, section 1106(i) of the New York Insurance Law [Section 1106(i)] authorizes the Superintendent to review the demutualization plan of a foreign life insurer licensed in New York and to specify the conditions, if any, that the Superintendent would impose in order for the foreign insurer to retain its New York license following its demutualization. In this regard, Section 1106(i) requires that a foreign life insurer licensed in New York file with the Superintendent a copy of the demutualization plan at least 90 days prior to the earlier of (a) the date of any public hearing required to be held on the plan of reorganization by the insurer's state of domicile and (b) the proposed effective date of the demutualization.

If, after examining the plan of reorganization, the Superintendent finds that the plan is not fair or equitable to the New York policyholders of the insurer, the Superintendent must set forth the reasons for his findings. In addition, the Superintendent must notify the insurer and its domestic state insurance regulator of his findings and his reasons for such findings and advise of any requirements he considers necessary for the protection of current New York policyholders in order to permit the insurer to continue to conduct business in New York as a stock life insurer after the demutualization.

March 31, 2001. PMHC expects the special meeting of members will occur in July 2001, with notice having been mailed during May 2001 to approximately 130,000 Plan policyholders which are Eligible Policyholders. (Approximately 940,000 policyholders will be eligible to vote on the Plan of Conversion and each policyholder will be entitled to only one vote, regardless of the number or size of the policies owned.) Further, PMHC's hearing on the Plan of Conversion is expected to be held during July 2001 in Des Moines, Iowa.

As for the IPO and the actual conversion, PMHC expects these events will transpire during the fourth quarter of 2001. However, PMHC notes the timing of these events may be delayed due to prevailing market conditions, but they should occur within 12 months of approval of the Plan of Conversion by the Commissioner, unless this period is extended by PMHC, with the approval of the Commissioner.

*Distributions to Eligible Policyholders*

12. The Plan of Conversion provides for Eligible Policyholders, whose membership interests in the holding company will be extinguished in the demutualization, to receive Common Stock of PFG, Cash, or Policy Credits. For this purpose, an Eligible Policyholder generally is the owner of one or more policies in force on the Record Date (which is the date one year prior to the date that PMHC's Board of Directors adopts the Plan), and who maintains a membership interest in PMHC until and on the Effective Date. Elections as to the form of consideration received or as to any other matter in connection with the Plan of Conversion will be made by one or more plan fiduciaries independent of Principal. In this regard, neither PMHC nor its affiliates will exercise any investment discretion or provide ''investment advice,'' as that term is defined in 29 CFR 2510.3–2(c), with respect to any election made by any Eligible Policyholder that is a Plan.[9]

In order to determine the amount of consideration to which each Eligible Policyholder is entitled (combinations of different forms of consideration will not be permitted), each Eligible Policyholder will be allocated (but not issued) a number of shares of Common Stock equal to the sum of (a) a fixed minimum number of shares[10] and (b) an additional number of shares based on actuarial formulas that take into account each policy's past and expected future contributions to the surplus of Principal.

13. In general, certain Eligible Policyholders will receive shares of Common Stock which will be distributed to such Eligible Policyholders without the payment of any brokerage fees or commissions. Certain other Eligible Policyholders will receive consideration in the form of Cash or Policy Credits, in lieu of Common Stock. The amount of Cash or Policy Credits will be determined by reference to the price per share at which the Common Stock of PFG is offered to the public in the IPO.

An Eligible Policyholder whose mailing address is outside the United States, or to whom mail is undeliverable at the address in Principal's records, or whose policy is known by Principal to be subject to a creditor lien will receive Cash in lieu of Common Stock, in an amount equal to the value of the Common Stock such policyholder would otherwise have received, based on the price of Common Stock in the IPO contemplated by the Plan of Conversion.

Certain other Eligible Policyholders, namely owners of individual retirement annuities, tax-sheltered annuities, individual life or annuity policies issued directly to plan participants in qualified pension or profit sharing plans, and certain group annuity policies issued to fund qualified pension or profit sharing plans will receive Policy Credits equal in value to the Common Stock allocated to such Eligible Policyholders.

In the case of a group annuity contract issued to fund a qualified plan (i.e., a Qualified Plan Customer), it is contemplated that the policyholder will be able to elect to receive Policy Credits instead of Common Stock or Cash. If Policy Credits are elected, the policyholder will be given a further election—to have the policy value increased by the amount of compensation involved or to have the policy enhanced with an interest in the Separate Account that will be maintained by Principal.[11] The assets of the Separate Account will be invested primarily in PFG Common Stock. Thus, in the absence of a policyholder election, PMHC states that the ''default'' consideration for the policyholder will be Policy Credits (in the form of an interest in the Separate Account), unless the contract or regulatory concerns preclude this form of compensation. As recordkeeper, Principal will allocate the Policy Credit compensation received, on a *pro rata* basis, among the participants of the Plan that is invested in the Separate Account, in accordance with their account balances and not on a *per capita* basis, unless the policyholder directs otherwise. In describing the default allocation alternative to Plan policyholders in policyholder materials, PMHC states that neither it nor its affiliates will be providing investment advice or recommendations to the policyholder on which option to choose.

PMHC represents that no purchases or sales of assets will be made between Principal or its affiliates and the Separate Account. Withdrawals will be permitted at any time, subject to ordinary liquidity restraints. Upon receiving a notice of withdrawal from a Plan policyholder, NTC, the custodian for shares of Common Stock that are held in the Separate Account, will sell such shares of Common Stock on the open market at their fair market value. NTI, the independent trustee of the Separate Account and an affiliate of NTC, will vote, at the direction of the Plan policyholders. Where no direction is received from a Plan policyholder, NTI will use ''mirror'' voting for routine issues (e.g., the appointment of accountants). In effect, NTI will cause those shares in the Separate Account for which no instructions have been received from a particular Plan to be

[9] The proceeds of the demutualization will belong to the Plan if they would be deemed to be owned by the Plan under ordinary notions of property rights. See ERISA Advisory Opinion 92–02A, January 17, 1992 (assets of plan generally are to be identified on the basis of ordinary notions of property rights under non-ERISA law). It is the view of the Department that, in the case of an employee welfare benefit plan with respect to which participants pay a portion of the premiums, the appropriate plan fiduciary must treat as plan assets the portion of the demutualization proceeds attributable to participant contributions. In determining what portion of the proceeds are attributable to participant contributions, the plan fiduciary should give appropriate consideration to those facts and circumstances that the fiduciary knows or should know are relevant to the determination, including the documents and instruments governing the plan and the proportion of total participant contributions to the total premiums paid over an appropriate time period. In the case of an employee pension benefit plan, or where any type of plan or trust is the policyholder, or where the policy is paid for out of trust assets, it is the view of the Department that all of the proceeds received by the policyholder in connection with a demutualization would constitute plan assets.'' See ERISA Advisory Opinion 2001–02A, February 15, 2001.

[10] PMHC expects 100 shares of Common Stock will be allocated to the fixed component. However, the final number of shares thus allocated will be subject to regulatory approval.

[11] If the Qualified Plan Customer elects the have the policy value increased by the amount of compensation involved, the Policy Credits will be referred to as ''Account Value Policy Credits.'' If the Qualified Plan Customer elects to have the policy enhanced with an interest in the Separate Account, or in the absence of policyholder election, the Policy Credits will be referred to as ''Separate Account Policy Credits.''

voted in the same proportion as shares for which specific instructions have been received from other Plan policyholders holding interests in the Separate Account. In addition, NTI will be authorized to exercise its own discretion on major issues, such as proxy contests.[12]

*Commission-Free Program*

14. The Plan of Conversion provides that PFG may establish a commission-free program that is to begin no earlier than the sixth month anniversary following the Effective Date of the demutualization and before the 12 month anniversary of such Effective Date at a time determined by the PFG's Board of Directors to be appropriate and in the best interests of the Holding Company and the Eligible Policyholders. The program, which will continue at least for three months, will be available to any Eligible Policyholder who receives fewer shares than 100 shares of Common Stock. Under the program, an Eligible Policyholder will be entitled to sell, at prevailing market prices, all the shares of Common Stock received by the Eligible Policyholder in the demutualization. No brokerage commissions, mailing charges, registration fees or other administrative or similar expenses will be charged.

In addition, the commission-free program will afford an Eligible Policyholder the opportunity to purchase additional shares of Common Stock in order that the Eligible Policyholder may round-up his or her holdings to 100 shares, again without the payment of any fees, charges or commissions.

*Independent Fiduciary*

15. As noted above, U.S. Trust will serve as independent fiduciary for all of the Principal Plans in connection with the implementation of PMHC's Plan of Conversion. Generally, such transactions over which U.S. Trust will exercise investment discretion may result in the acquisition, holding or disposition of Common Stock by the Principal Plans. U.S. Trust states that it is familiar with the Department's independent fiduciary requirements and has acknowledged and accepted such duties, responsibilities and liabilities to act on behalf of the Principal Plans. In return for services rendered, U.S. Trust will be compensated by either PMHC, a successor, or an affiliate.

U.S. Trust is the principal subsidiary of U.S. Trust Corporation, a member of the Federal Reserve System and the Federal Deposit Insurance Corporation, and an entity having approximately $5 billion in assets. The parent corporation, U.S. Trust Corporation, was founded in 1853 in New York and is subject to regulation as a trust company in the State of New York. As of December 31, 1999, U.S. Trust Corporation had approximately $5 billion in assets and over $75 billion in assets under management, a significant portion of which consisted of the assets of ERISA-covered Plans. In addition, U.S. Trust Corporation is a wholly owned subsidiary of the Charles Schwab Corporation. 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.

U.S. Trust represents that it is independent of PMHC 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 PMHC and its affiliates. Further, U.S. Trust represents that it derives less than one percent of its annual income from PMHC and its affiliates.

As the independent fiduciary for the Principal Plans, U.S. Trust will be required to (a) vote on whether to approve or not to approve the proposed demutualization; (b) elect between consideration in the form of Common Stock, Cash or Policy Credits on behalf of such Plans; (c) determine how to apply the Common Stock, Cash or Policy Credits received for the benefit of the participants and beneficiaries of the Principal Plans; (d) vote on shares of Common Stock that are held by the Principal Plans and dispose of such stock held by a Plan exceeding the limitation of section 407(a)(2) of the Act as soon as it is reasonably practicable, but in no event later than six months after the effective date of the Plan of Conversion; and (e) take all actions that are necessary and appropriate to safeguard the interests of the Principal Plans and their participants and beneficiaries. In addition, U.S. Trust will provide the Department with a complete and detailed final report as it relates to the Principal Plans prior to the Effective Date of the demutualization. Finally, U.S. Trust states that it has conducted a preliminary review of PMHC's Plan of Conversion and it sees nothing in the Plan that would preclude the Department from proposing the requested exemption.

16. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Plan of Conversion will be implemented in accordance with stringent procedural and substantive safeguards that are imposed under Iowa law and will be subject to review and supervision of the Commissioner and the Superintendent.

(b) The Commissioner will review the terms and options that are provided to Eligible Policyholders as part of such Commissioner's review of the Plan of Conversion and the Commissioner will approve the Plan of Conversion following a determination that such Plan is fair and equitable to Eligible Policyholders (including Plans).

(c) The Superintendent will object to the Plan of Conversion if he or she finds that such Plan is not fair and equitable to all New York Eligible Policyholders.

(d) As part of their separate determinations, both the Commissioner and the Superintendent must concur on the terms of the Plan of Conversion.

(e) One or more independent Plan fiduciaries will have an opportunity to vote to approve the terms of the Plan of Conversion (or to comment on such Plan), and will be solely responsible for all such decisions after receiving full and complete disclosure from PMHC and/or Principal.

(f) The Plan of Conversion will provide Principal and PMHC with access to new sources of capital that should help sustain Principal's financial strength, increase its ability to conduct its business efficiently and improve Principal's competitive position in the insurance industry.

(g) The proposed exemption will allow Eligible Policyholders that are Plans to receive shares of Common Stock, Cash or Policy Credits, in exchange for their membership interests in PMHC and neither PMHC nor any of its affiliates will exercise investment discretion or provide ''investment advice,'' within the meaning of 29 CFR 2510.3–21(c), with respect to such decisions, options given, or the default consideration, in the event no Plan policyholder choice is made.

(h) Each Eligible Policyholder will have an opportunity to determine whether to vote to approve the terms of the Plan of Conversion and will also be solely responsible for any decisions that may be permitted under the Plan of

[12] The Department would expect that NTI, in implementing the ''mirror voting'' procedure under the Separate Account, to act ''prudently, solely in the interests of Plan participants, and for the exclusive purpose of providing benefit to participants and beneficiaries,'' within the meaning of section 404(a)(1) of the Act.

Conversion regarding the form of consideration to be received in the demutualization.

(i) All Plans that are Eligible Policyholders will participate in the transactions and on the same basis as Eligible Policyholders that are not Plans.

(j) No Eligible Policyholder will pay any brokerage commissions or fees in connection with the receipt of Common Stock or Policy Credits or in connection with the implementation of the commission-free program.

(k) The demutualization will not, in any way, change premiums or reduce policy benefits, values, guarantees or other policy obligations of Principal to its policyholders and contractholders.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

**Anthem Insurance Companies, Inc. (Anthem), Located in Indianapolis, IN**

[Application No. D–10979]

**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).[13]

**Section I. Covered 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 the receipt, by an employee benefit plan (the Plan) or by a Plan participant (the Plan Participant) that is a member of Anthem (together, the Eligible Members) by reason of the ownership of an insurance policy or contract issued by Anthem, of common stock (Common Stock) issued by Anthem, Inc. (the Parent Company), a newly-formed holding company or cash (Cash), in exchange for such Plan's or Plan Participant's mutual membership interest in Anthem, in accordance with a plan of conversion (the Plan of Conversion) adopted by Anthem and implemented under Indiana law.

This proposed exemption is subject to the following conditions set forth below in Section II.

[13] For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

**Section II. General Conditions**

(a) The Plan of Conversion is subject to approval, review and supervision by the Commissioner of Insurance of the Indiana Department of Insurance (the Commissioner) and is implemented in accordance with procedural and substantive safeguards imposed under Indiana law.

(b) The Commissioner reviews the terms and options that are provided to Eligible Members as part of such Commissioner's review of the Plan of Conversion, and the Commissioner approves the Plan of Conversion following a determination that such Plan is fair, reasonable and equitable to Eligible Members.

(c) Each Eligible Member has an opportunity to vote to approve the Plan of Conversion after full written disclosure is given to the Eligible Member by Anthem.

(d) Any determination to receive Common Stock or Cash by an Eligible Member which is a Plan, pursuant to the terms of the Plan of Conversion, is made by one or more Plan fiduciaries which are independent of Anthem and its affiliates and neither Anthem nor any of its affiliates exercises any discretion or provides ''investment advice'' within the meaning of 29 CFR 2510.3–21(c), with respect to such decisions.

(e) Any determination to receive Common Stock or Cash by an Eligible Member which is a Plan Participant, pursuant to the terms of the Plan of Conversion, is made by such participant and neither Anthem nor any of its affiliates exercises any discretion or provides ''investment advice'' within the meaning of 29 CFR 2510.3–21(c), with respect to such decisions.

(f) After each Eligible Member entitled to receive shares of Common Stock is allocated at least 21 shares, additional consideration is allocated to Eligible Members who own participating policies based on actuarial formulas that take into account each participating policy's contribution to Anthem's statutory surplus, which formulas are subject to review and approval by the Commissioner.

(g) All Eligible Members that are Plans or Plan Participants participate in the transactions on the same basis and within their class groupings as all Eligible Members that are not Plans or Plan Participants.

(h) No Eligible Member pays any brokerage commissions or fees in connection with their receipt of Common Stock or in connection with the implementation of the commission-free purchase and sale program.

(i) All of Anthem's policyholder obligations remain in force and are not affected by the Plan of Conversion.

**Section III. Definitions**

For purposes of this proposed exemption,

(a) The term ''Anthem'' means Anthem Insurance Companies, Inc. and any affiliate of Anthem, as defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of Anthem includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Anthem; (For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.) and

(2) Any officer, director or partner in such person.

(c) A ''policy'' is defined as (1) any individual insurance policy or health care benefits contract that has been issued by Anthem and under which the holder thereof has membership interests in Anthem; (2) any certificate issued by Anthem under a group insurance policy or health care benefits contract under which certificate the holder thereof has membership interests in Anthem; or (3) certificates of membership issued by Anthem in or under guaranty policies under which certificate the holder thereof is a member of Anthem with membership interests.

(d) The term ''membership interests'' means (1) voting rights of Anthem's members as provided by law and Anthem's Articles of Incorporation and Bylaws, and (2) the rights of members to receive cash, stock, or other consideration in the event of conversion to a stock insurance company under Indiana Demutualization Law or a dissolution of Anthem as provided by Indiana insurance law and Anthem's Articles of Incorporation and Bylaws.

(e) The term ''Eligible Member'' means a person or entity (1) whose name appears on Anthem's records as the holder of one or more in force policies issued by Anthem as of both the date the Board of Directors adopts the Plan of Conversion and the effective date of the Plan of Conversion, and (2) who has had continuous health care benefits coverage with the same insuring company during the period between those two dates under any policy without a break of more than one day.

(f) The term ''Parent Company'' refers to a corporation organized and existing under the Indiana Business Corporation Law. Prior to the conversion, the Parent

Company will be a wholly owned subsidiary of Anthem. Upon the conversion of Anthem to a stock company, the Parent Company will serve as the ''Indiana parent corporation'' of Anthem for purposes of Indiana law. Upon the effective date of the Plan of Conversion, the Parent Company will complete an initial public offering (the IPO) of shares of Parent Company Common Stock for cash.

**Summary of Facts and Representations**

*Description of the Parties*

1. Anthem, which maintains its principal place of business in Indianapolis, Indiana, is organized as a mutual insurance company under the laws of the State of Indiana. Together with its subsidiaries (collectively, the Company), Anthem is one of the nation's largest health benefits companies. As an independent licensee of the Blue Cross Blue Shield Association (BCBSA), the Company offers BCBSA-branded products throughout Indiana, Ohio, Kentucky, Connecticut, Colorado, Nevada, New Hampshire and Maine. The Company provides health care coverage or services to over 7 million people in these states. As of December 31, 2000, Anthem had approximately $5.7 billion in assets, $3.8 billion in liabilities and surplus of $1.9 billion. Anthem's current financial strength ratings are as follows: A.M. Best Company, Inc., A−; Standard & Poor's Rating Service, A; Moody's Investors Service, Inc., A3; and Fitch, Inc., A+.

2. The Company offers a diversified mix of managed care products, including health maintenance organizations, preferred provider organizations, and point of service plans, as well as traditional indemnity products. In addition, the Company offers a full range of managed care services and partially-insured products for self-funded employer Plans, such as underwriting services, stop loss insurance, actuarial services, network access, medial cost management, claims processing, and administrative services. In nearly all cases, the Company provides administrative, recordkeeping and other support services to Plans that are funded by Anthem insurance policies. These services include claims processing, premium collection, billing, reporting, and managed care services (including medical case management and utilization review services). Moreover, the Company provides specialty products, including group life, disability, prescription management, workers compensation, administrative and claims management services, dental and vision care services, and allows customers to choose from an array of funding alternatives.

3. As a mutual insurance company, Anthem does not have any stockholders. Instead, Anthem has members who are deemed holders of certain insurance policies and contracts which it has issued. As members, the policyholders have the right to vote in the election of Anthem's Board of Directors and to vote on any proposition that the Board submits to a vote of the members in accordance with Indiana law, including the right to vote on the conversion of Anthem from a mutual insurance company to a stock company. The voting rights of Anthem members are equal, with each member having only one vote regardless of the size, type, or number of policies owned by such member. As discussed herein, Anthem's members also have the right to vote and to receive consideration in the event of the Anthem's demutualization.

Unlike most insurance companies, Anthem generally treats individual certificate holders under its group contracts as members instead of as group contract holders. Thus, in most cases, employers that fund their Plans with Anthem group contracts are not members of Anthem. Instead, the participants in these Plans are the members. Currently, Anthem has approximately 1 million members who hold certificates under either group plans or individual policies. Of these members, approximately 650,000 have received their membership interests through participation in Plans.

However, in a small number of cases, Plan group contract holders, which are generally employers rather than certificate holders, are considered members of Anthem. The subject cases have arisen out of mergers into Anthem of three Blue Cross Blue Shield (BCBS) licensees, which were organized as mutual insurance companies prior to the mergers.[14] Currently, Anthem has approximately 7,000 members that are Plan group policyholders. (These are generally employers that hold the policies to provide benefits to their employees.)

4. Anthem Holdings or the ''Parent Company'' will be a corporation organized and existing under the Indiana Business Corporation Law. Prior to the conversion, the Parent Company will be a wholly owned subsidiary of Anthem. Upon the conversion of Anthem to a stock company, the Parent Company will serve as the ''Indiana parent corporation'' of Anthem for purposes of Indiana law. Upon the effective date of the Plan of Conversion, the Parent Company will complete an IPO of shares of Parent Company Common Stock for cash.[15] It is anticipated that the Common Stock will be traded on the New York Stock Exchange.

*The Anthem Conversion*

5. On February 1, 2001, Anthem's Board of Directors announced the appointment of a special committee to work with Anthem's management to develop a Plan of Conversion, which with Amended and Restated Articles of Incorporation, is expected to be approved by the Board of Directors during June 2001. The principal purpose of the conversion is to benefit Anthem's members and other customers by enhancing Anthem's financial strength and flexibility and by distributing value to its Eligible Members in the form of marketable common stock issued by Anthem Holdings (i.e., the Parent Company) or Cash, in exchange for such member's otherwise illiquid policyholders' membership interests. Thus, Eligible Members will realize economic value from their membership interests that is not currently available to them as long as Anthem remains a mutual company. However, Anthem's conversion will not in any way change premiums or reduce or change insurance or other health care benefits or contractual obligations of Anthem to its members and policyholders. Further, the conversion will provide Anthem with access to additional capital that is not available under the mutual form of corporate organization.

The Plan of Conversion is subject to the approval of the Commissioner, the members of Anthem who are entitled to

[14] Specifically, the Kentucky BCBS licensee (Southeastern Mutual Insurance Company) merged into Anthem in 1993. Community Mutual Insurance Company, an Ohio Blue Cross Blue Shield licensee, merged into Anthem in 1995. The Connecticut BCBS licensee (Blue Cross & Blue Shield of Connecticut, Inc.) merged into Anthem in 1997. These ''grandfathered'' members are group policyholders that (a) held contacts issued by the Kentucky, Ohio and Connecticut companies before those companies merged into Anthem and (b) have continuous coverage that meets specific requirements through the Company since the merger. These group contract holders were ''grandfathered'' as members to preserve their membership interests in the merging mutual companies. For any new group contracts issued with respect to Plans by one of those companies since its merger with Anthem, however, the group contract holders, are members of Anthem.

[15] At the present time, Anthem does not know the number of shares of Parent Company Common Stock that will be issued at the IPO. Anthem states that the exact number will not be known for some time because the number of shares will depend, among other factors, on market conditions at the time of the IPO (which is not expected to occur until late October or early November 2001).

vote on the Plan of Conversion,[16] the other conditions set out in the Plan of Conversion, and other applicable state and federal regulatory approvals. Market conditions, regulatory requirements, and business considerations may also influence the final sequence of events.

6. Accordingly, Anthem requests, on behalf of itself, its affiliates, and its future Parent Company, an administrative exemption from the Department that will permit Eligible Members which are Plans and Plan Participants to receive Common Stock issued by the Parent Company or Cash in exchange for their existing membership interests in Anthem. Anthem represents that although it and its affiliates generally provide administrative, record-keeping, or other support services to Plans in connection with the insurance policies and contracts sold to such Plans, the sales of the insurance products do not, in and of themselves, cause the insurer to be considered a party in interest. However, Anthem understands that, because of the services it or its affiliates provide to Plans that are funded through its insurance products, it or its affiliates may be considered parties in interest or even fiduciaries.

Therefore, Anthem represents that the receipt of Parent Company Common Stock or Cash by a Plan or a Plan Participant can be viewed as a prohibited sale or exchange of property between the insurer (or the Parent Company) and the Plan or the Plan Participant, or it can be construed as a transfer or use of plan assets by or for the benefit of a party in interest in violation of section 406(a)(1)(A) and (D) of the Act. Therefore, Anthem has requested administrative exemptive relief from the Department in order to avoid any prohibited transactions that may occur inadvertently in the course of the conversion.

The requested exemption is based upon a number of procedural and substantive protections that Indiana insurance law provides to all policyholders of a mutual insurance company that is undergoing conversion to a stock company. In this regard, all Eligible Members that are Plans (and Plan Participants) with respect to which Anthem or any of its affiliates is a party in interest will participate on the same basis and within their class groupings as all Eligible Members that are not Plans or Plan Participants.

[16] The members eligible to vote will be the members of Anthem as of the date Anthem's Board of Directors approves the Plan of Conversion. That date will be the record date for the special meeting of the members that will be held for purposes of voting on the Plan of Conversion.

Anthem represents that neither it, the Parent Company, their subsidiaries, nor any of the employees, officers, and directors of Anthem, the Parent Company, or their subsidiaries are or will be Eligible Members under any Plan established or maintained by Anthem, the Parent Company, or their subsidiaries for the benefit of their employees, officers or directors. Therefore, Anthem does not request that the exemption apply to such Plans.

*Indiana Insurance Law*

7. Anthem anticipates that the following steps of the conversion will occur pursuant to the Plan of Conversion:

- Anthem will convert from a mutual company to a stock company under Indiana law and will issue to the Parent Company all of its outstanding Anthem capital stock.
- All membership interests in Anthem will be extinguished, and, in exchange, Eligible Members will receive shares of Parent Company Common Stock or Cash.
- The capital stock of the Parent Company owned by Anthem will be canceled and cease to exist.
- The effective date of the Plan of Conversion will be the closing date of the Parent Company's IPO.
- Eligible Members may elect to receive Parent Company Common Stock or Cash. The Parent Company will issue shares of Parent Company Common Stock to Eligible Members who affirmatively elect to receive shares of Common Stock. The Parent Company will pay Cash to Eligible Members who are deemed to elect Cash because they fail to make a stock election or who are required to receive Cash because their mailing address, as shown on Anthem's records, is outside of the United States or because their receipt of stock would, in Anthem's judgment, fail to comply with the securities registration requirements (or applicable exemptions) of the Eligible Member's state of domicile. To the extent that sufficient Cash is not available to pay Cash to all of these Eligible Members, the Parent Company will pay Cash first to those Eligible Members who are required to receive Cash because of their domicile and then to those Eligible Members with the smallest share allocations. Once the amount of Cash available is exhausted, the remaining Eligible Members will be issued shares of Parent Company Common Stock.

*Procedural Requirements Under Indiana Demutualization Law*

8. Indiana Demutualization Law (i.e., Indiana Code 27–15 *et seq.*), establishes an approval process for the demutualization of domestic mutual insurance companies. In this regard, the conversion of a mutual insurance company to a stock company must be initiated by the board of directors of the mutual insurance company. The board of directors may approve a plan of conversion only upon a finding that the proposed conversion is in the best interests of the converting mutual insurance company, the Eligible Members, and the other policyholders of the company.

Once the plan of conversion is approved by the company's board of directors, the company must submit an application for the approval of the plan of conversion to the Commissioner. The application must contain the following information:

- The plan of conversion and a certificate of the secretary of the converting mutual insurance company certifying the approval of the plan by the company's board of directors.
- A statement of the reasons for the proposed conversion and why the conversion is in the best interests of the converting mutual insurance company, the Eligible Members, and the other policyholders. The statement must include an analysis of the risks and benefits to the converting mutual insurance company and its members of the proposed conversion and a comparison of the risks and benefits of the conversion with the risks and benefits of reasonable alternatives to a conversion.
- A five year business plan and at least two years of financial projections of the former mutual insurance company and any parent company.
- Any plans that the former mutual insurance company or any parent company may have to:
- Raise additional capital through the issuance of stock or otherwise;
- Sell or issue stock to any person, including any compensation or benefit plan for directors, officers, or employees under which stock may be issued;
- Liquidate or dissolve any company or sell any material assets;
- Merge or consolidate or pursue any other form of reorganization with any person; or
- Make any other material change in investment policy, business, corporate structure, or management.
- Any plans for delayed distribution of consideration.
- A plan of operation for a closed block,[17] if a closed block is used for the

[17] Indiana Demutualization Law defines the term ''closed block'' to mean an allocation of assets for

Continued

preservation of the reasonable dividend expectations of Eligible Members and other policyholders with policies that provide for the distribution of policy dividends. (Anthem represents that it does not have any policies for which there is a reasonable expectation of dividends and, accordingly, a closed block will not be established.)

• Copies of the amendment to the articles of incorporation proposed by the board of directors and the proposed bylaws of the former mutual insurance company and copies of the existing and any proposed articles of incorporation and bylaws of any parent company.

• A list of all individuals who are or have been selected to become directors or officers of the former mutual insurance company and any parent company, or the individuals who perform or will perform duties customarily performed by a director or officer, as well as specific biographical information about those individuals.

• A fairness opinion addressed to the board of directors of the converting mutual, from a qualified, independent financial advisor, asserting (a) that the provision of stock, cash, policy benefits, or other forms of consideration upon the extinguishing of the converting mutual's membership interests under the plan of conversion and the amendment to the articles of incorporation is fair to the Eligible Members, as a group, from a financial point of view; and (b) whether the total consideration under clause (a) is equal to or greater than the surplus of the converting mutual.

• An actuarial opinion as to the following:

• The reasonableness and appropriateness of the methodology or formulas used to allocate consideration among Eligible Members, consistent with the statute.

• The reasonableness of the plan of operation and the sufficiency of the assets allocated to the closed block, if a closed block is used for the preservation of the reasonable dividend expectations of Eligible Members and other policyholders with policies that provide for the distribution of policy dividends. (Anthem represents that it does not have any policies for which there is a reasonable expectation of dividends and again emphasizes that, a closed block will not be established.)

• Any additional information, documents, or materials that the converting mutual insurance company determines to be necessary.

• Any other additional information, documents, or materials that the Commissioner requests in writing.

9. Upon determining that the application is complete, the Commissioner must conduct a public hearing on the plan of conversion. The purpose of the hearing is to receive comments and information to aid the Commissioner in considering and approving or disapproving the application for approval of the plan of conversion. Persons wishing to make comments and submit information may submit written statements before or at the public hearing and may also appear and be heard at the public hearing. The converting mutual insurance company must provide at least thirty days prior written notice of the hearing to its members and policyholders. The converting mutual insurance company must also cause notice of the public hearing to be published in a newspaper of general circulation in the city where the principal office of the converting mutual insurance company is located, in Indianapolis and in any other city specified by the Commissioner. Both the written notice and the form and content of the published notice must be pre-approved by the Commissioner.

The Commissioner must fully consider any comments received at the public hearing consistent with Indiana's Administrative Rules and Procedures Act before making a determination on the Plan of Conversion. After the public hearing, the Commissioner must approve the application and permit the conversion under the plan of conversion if the Commissioner finds the following:

• That the amount and form of consideration is fair in the aggregate and to each member class;

• That the Plan of Conversion and the amendment to the articles of incorporation:

• Comply with the Indiana Demutualization Law and other applicable laws;

• Are fair, reasonable, and equitable to the Eligible Members; and

• Will not prejudice the interests of the other policyholders of the converting mutual insurance company; and

• That the total consideration provided to Eligible Members upon the extinguishing of the converting mutual's membership interests is equal to or greater than the surplus of the converting mutual. A person who is aggrieved by an agency action of the Commissioner under the Indiana Demutualization Law may petition for judicial review of the action.

Indiana Demutualization Law also permits the Commissioner to employ accountants, actuaries, attorneys, financial advisors, investment bankers and other experts that are necessary to assist the Commissioner in reviewing all matters under the Indiana Demutualization Law.

In addition to receiving Commissioner approval, the plan of conversion must be approved by the converting mutual insurance company's policyholders. The policyholders must be provided with notice of the meeting called for the purpose of voting on the Plan of Conversion. The converting mutual insurance company must also provide explanatory information about the conversion to policyholders. The form of the meeting notice, explanatory information, and any proxy solicitation materials must be approved in advance by the Commissioner. The Plan of Conversion must be approved by at least two-thirds of the policyholders voting at the meeting.[18]

10. As noted in Representation 5, Anthem's Board of Directors approved Anthem's Plan of Conversion on June 18, 2001. As for the policyholder meeting, Anthem indicates that the notice is tentatively scheduled to be mailed beginning in mid- to late August 2001. When the meeting is held, approximately 1 million Eligible Members (including Plans and Plan Participants), will be able to vote on the Plan of Conversion. However, each Eligible Member will be entitled to only one vote. Anthem expects that the Commissioner will approve the Plan of Conversion (after a public hearing in September 2001 by late October 2001, and that the demutualization will become effective in late October (following Commissioner and member approvals) or during November 2001, although delays in the regulatory process could further affect these dates.

a defined group of in force policies which, together with the premiums of those policies and related investment earnings, are expected to be sufficient to maintain the payments of guaranteed benefits, certain expenses, and continuation of the current dividend scale on the closed block, if experience does not change.

[18] It should be noted that Indiana law imposes stringent time constraints on the distribution of demutualization consideration to policyholders. Specifically, unless a very narrow exception applies, which is authorized by the Commissioner, all demutualization consideration must be distributed within six months after the insurer's conversion to a stock company. The exception, which Anthem states will not apply to the subject exemption request, would require that a claim be filed by, or on behalf of, one or more Anthem policyholders. The claim must assert, to the satisfaction of the Commissioner, that (a) irreparable harm will result if distribution occurs before the Department issues the requested exemption, and (b) a trust should be established by the insurer to hold the demutualization consideration until the exemption is granted. (For a discussion of the trust requirement imposed under Indiana Demutualization Law, see Representation 16 in the notice of proposed exemption for Indianapolis Life Insurance Company, 66 FR 7802, January 25, 2001, at 7807.)

*Distributions to Anthem's Members*

11. As noted above, Anthem's Plan of Conversion provides for Eligible Members to receive Common Stock of the Parent Company or Cash as consideration for giving up their membership interest in the mutual insurance company, which interests will be extinguished as a result of the demutualization.[19] Eligible Members may elect to receive Parent Company Common Stock or Cash.[20] The Parent Company will issue shares of Parent Company Common Stock to Eligible Members who affirmatively elect to receive such stock. The Parent Company will pay Cash to Eligible Members who are deemed to elect Cash because their mailing address, as shown on Anthem's records, is outside of the United States or the receipt of stock, would, in Anthem's judgment, fail to comply with the securities registration requirements (or applicable exemptions) of the Eligible Member's state of domicile, or they fail to make a stock election. To the extent that sufficient Cash is not available to pay Cash to all of these Eligible Members, the Parent Company will pay Cash first to those Eligible Members who are required to receive Cash because of their domicile and then to those Eligible Members with the smallest share allocations. Once the amount of Cash available is exhausted, the remaining Eligible Members will be issued shares of Parent Company Common Stock. The amount of Cash will be determined by multiplying the number of shares of Common Stock allocated to the Eligible Member by the price at which such Common Stock is being offered to the public in the IPO.

The total consideration to be distributed to Eligible Members will be equal in value to a specified number of shares of Common Stock as determined by the Board of Directors. As required by Indiana law, this value is expected to be at least equal to the amount of Anthem's statutory surplus. Each Eligible Member will be allocated a fixed component of consideration, consisting of 21 shares of Parent Company Common Stock. The remaining shares of Common Stock will then be allocated to the Eligible Members based on the actuarial contribution that each Eligible Member has made to Anthem's statutory surplus.

After shares of Common Stock have been allocated, actual consideration will be paid as soon as practicable after the conversion date to Eligible Members. The decision as to the form of consideration to be received in exchange for membership interests in Anthem will be made by one or more independent Plan fiduciaries in the case of a Plan, or if applicable, by a Plan Participant. Under either circumstance, neither Anthem nor its affiliates will provide the Plan fiduciary or the Plan Participant with ''investment advice'' within the meaning of 29 CFR 2510.3–21(c) of the Act or exercise investment discretion with respect to such decision.

*Lock-Up Period and Commission-Free Sales and Purchase Program*

12. To allow Anthem to create and maintain an orderly market for, and improve the marketability of Parent Company Common Stock after the IPO, Anthem will institute a 6 month ''lock-up'' period. The lock-up period will also assure new investors who buy shares in the IPO that the Eligible Members who are given shares in the demutualization will not sell a large block of Parent Company Common Stock after the IPO. During the lock-up period, Parent Company Common Stock issued to an Eligible Member will be uncertified. The Eligible Member will have the right to vote and to receive dividends and any other distributions related to the stock. However, Eligible Members will not be able to liquidate their stock holdings until the lock-up period is over. The lock-up period will continue for 6 months after the effective date of the Plan of Conversion. As soon as practicable after the expiration of the lock-up period, Eligible Members will be entitled to receive a certificate for the Parent Company Common Stock that is registered in their name on the company books. Upon the expiration of the lock-up period, the Parent Company Common Stock will be freely-tradeable and may be disposed of on a stock exchange or in any other manner the Eligible Member chooses, in compliance with securities laws.

13. Following the lock-up period, Anthem will establish a commission-free sales and purchase program, although the exact contours of such program have not yet been clearly-defined. Anthem, does, however, expect that the program will commence no sooner than the first business day after the 6 month anniversary, and no later than the last business day before the 30 month anniversary, of the effective date of the demutualization. Under the program, each shareholder owning 99 or fewer shares of Parent Company Common Stock on the record date of the program will have the opportunity, at any time during the term of the program, to sell all, but not less than all, of those shares in one transaction at prevailing market prices without paying brokerage or other similar expenses. Simultaneously and in conjunction with the commission-free sales program, Anthem will also offer each shareholder eligible to participant in such program, the opportunity to purchase additional shares of Parent Company Common Stock, as necessary, in order that the shareholder may increase such share holdings to 100 share round lots without paying brokerage commissions or other similar expenses.

14. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Plan of Conversion will be implemented pursuant to stringent procedural and substantive safeguards imposed under Indiana law and supervised by the Commissioner.

(b) The Commissioner will only approve the Plan of Conversion following a determination that, among other things, such Plan is fair, reasonable, and equitable to all of Anthem's Eligible Members (including Plans and Plan Participants).

(c) One or more independent fiduciaries of each Plan that is an Eligible Member on the date the Plan of Conversion is adopted, and each Plan Participant/certificate holder who is an Eligible Member on the date the Plan of Conversion is adopted, will have an opportunity to vote whether to approve the terms of the Plan of Conversion and will also be solely responsible for any decisions that may be permitted under the Plan of Conversion regarding the form of consideration to be received in

[19] Because Anthem does not issue any policies to or in connection with individual retirement accounts, tax-deferred annuities, or tax-qualified plans, no consideration will be paid in the form of ''policy credits.''

[20] ''The proceeds of the demutualization will belong to the Plan if they would be deemed to be owned by the Plan under ordinary notions of property rights. See ERISA Advisory Opinion 92–02A, January 17, 1992 (assets of plan generally are to be identified on the basis of ordinary notions of property rights under non-ERISA law). It is the view of the Department that, in the case of an employee welfare benefit plan with respect to which participants pay a portion of the premiums, the appropriate plan fiduciary must treat as plan assets the portion of the demutualization proceeds attributable to participant contributions. In determining what portion of the proceeds are attributable to participant contributions, the plan fiduciary should give appropriate consideration to those facts and circumstances that the fiduciary knows or should know are relevant to the determination, including the documents and instruments governing the plan and the proportion of total participant contributions to the total premiums paid over an appropriate time period. In the case of an employee pension benefit plan, or where any type of plan or trust is the policyholder, or where the policy is paid for out of trust assets, it is the view of the Department that all of the proceeds received by the policyholder in connection with a demutualization would constitute plan assets.'' See ERISA Advisory Opinion 2001–02A, February 15, 2001.

return for their respective membership interests.

(d) Because of all of the protections afforded to Plans and Plan Participants under Indiana law, no ongoing involvement by the Department will be required in order to safeguard the interests of Eligible Members that are Plans or Plan Participants.

(e) The Plan of Conversion will enable Plans or Plan Participants to convert their illiquid membership interests in Anthem into Parent Company Common Stock or Cash.

(f) Anthem's insurance contracts will remain in force and will not be affected by the Plan of Conversion, and there will be no changing of premiums or compromising any of the benefits, values, guarantees, or other policy obligations of Anthem to its policyholders and contractholders.

(g) Each Eligible Member that is a Plan or a Plan Participant will have an opportunity to comment on the Plan of Conversion and, if such Plan or Plan Participant is a voting member, to vote for or against the Plan of Conversion after full disclosure by Anthem of the terms of the Plan of Conversion.

**Notice to Interested Persons**

Pursuant to the requirements of Indiana Demutualization Law, during August, 2001, Anthem will provide its members, including Plans and Plan Participants, with an advance disclosure document relating to its conversion to a stock company. The document, known as ''The Member Information Statement'' (or MIS) will include, among other things, (a) a notice of the date, time, and place for voting on the Plan of Conversion; (b) a notice of the time, place, and purpose of a public hearing on the Plan of Conversion, at which members can express their views on the Plan of Conversion; (c) detailed information regarding Anthem's Plan of Conversion; and (d) business and financial information about Anthem and the Parent Company. The MIS will be provided in a form and manner approved by the Commissioner and will be sent to over 1 million Anthem members, including Plans and Plan Participants who hold certificates issued pursuant to their respective Plans. Anthem has deemed such Plans and Plan Participants to be ''interested persons'' for purposes of this exemption.

In connection with the exemption request, Anthem wishes to provide notice of the proposed exemption in a manner that takes into account (a) the costs and administrative burdens of providing a separate notice of the proposed exemption to all affected members; (b) the notices required, and member protections accorded, under state law; and (c) the limited scope of exemptive relief that it has requested. In this regard, Anthem has incorporated the Department's required supplemental statement describing the exemption proceeding (see 29 CFR 2570.43) in a slightly modified form in the MIS under the special heading ''Notice of Application for Prohibited Transaction Exemption'' (hereinafter, the MIS Notice). The MIS Notice is intended to inform affected members of the anticipated publication of the proposed exemption in the **Federal Register** and their right to comment on the proposal. The MIS Notice states that an affected member may call a toll-free number maintained by Anthem (1–866–299–9628) or write to Anthem if the member wishes to be provided with a copy of the proposed exemption when it is published in the **Federal Register**. In addition, the MIS Notice indicates that the proposed exemption will be posted on Anthem's website (www.anthem.com) after publication.

Any Plan or Plan Participant requesting that Anthem provide a copy of the proposed exemption will be sent a copy of such document within 15 days of its publication in the **Federal Register**. The copy of the proposed exemption will be accompanied by another version of the supplemental statement, as required under the Department's regulations. In addition, the proposed exemption, together with a copy of the supplemental statement, will be posted on Anthem's website within 15 days of publication. Anthem will give Plan members 45 days to file comments with the Department. The comment period will commence on the date the proposed exemption is published 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.)

**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 31st day of July, 2001.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 01–19489 Filed 8–2–01; 8:45 am]

BILLING CODE 4510–29–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (01–192)]**

## Government-Owned Patent, Available for Licensing

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of availability of a patent for licensing.

**SUMMARY:** The patent listed below assigned to the National Aeronautics and Space Administration is available for licensing on a nonexclusive basis.

**DATES:** August 3, 2001.

**FOR FURTHER INFORMATION CONTACT:** Harry Lupuloff, Patent Attorney, NASA Headquarters, Code GP, Washington, DC

20546; telephone (202) 358–2424, fax (202) 358–4341.

U.S. Patent No. 6,223,143 ''Quantitative Risk Assessment System (QRAS).''

Dated: July 30, 2001.

**Edward A. Frankle,**

*General Counsel.*

[FR Doc. 01–19405 Filed 8–2–01; 8:45 am]

BILLING CODE 7510–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–387 and 50–388]**

## PPL Susquehanna, LLC; Allegheny Electric Cooperative, Inc.; Susquehanna Steam Electric Station, Unit Nos. 1 and 2; Notice of Issuance of Amendment to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment Nos. 194 and 169 to Facility Operating License Nos. NPF–14 and NPF–22, issued to PPL Susquehanna, LLC (PPL or the licensee), which revised the Facility Operating Licenses and Technical Specifications for operation of the Susquehanna Steam Electric Station (SSES), Unit Nos. 1 and 2, located in Luzerne County, Pennsylvania. The amendments are effective as of the date of issuance.

The amendments modified the Facility Operating Licenses and Technical Specifications for SSES, Units 1 and 2, to increase the licensed power level for each unit from 3441 megawatts thermal (MWt) to 3489 MWt, which is an increase of 1.4 percent of the rated core thermal power for SSES, Units 1 and 2.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on April 24, 2001 (66 FR 20691). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendments will not have a significant effect on the quality of the human environment (66 FR 33716).

For further details with respect to the action see (1) the application for amendments dated October 30, 2000, and supplemented February 5, May 22, May 31, and June 26, 2001, (2) Amendment No. 194 to License No. NPF–14, and Amendment No. 169 to License No. NPF–22, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737 or by email to pdr@nrc.gov.

Dated at Rockville, Maryland, this 6th day of July 2001.

For The Nuclear Regulatory Commission.

**Robert G. Schaaf,**

*Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 01–19416 Filed 8–2–01; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–354]**

## PSEG Nuclear LLC Atlantic City Electric Company; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 131 to Facility Operating License No. (FOL) NPF–57 issued to PSEG Nuclear LLC, which revised the FOL and Technical Specifications for operation of the Hope Creek Generating Station, located in Salem County, New Jersey. The amendment is effective as of the date of issuance.

The amendment modified the FOL and Technical Specifications to increase the licensed power level by approximately 1.4% from 3,293 megawatts (MW) thermal to 3,339 MW thermal. The changes are anticipated to increase the unit's net electrical output by 15 MW electric. The changes are based on the installation of the CE Nuclear Power LLC Crossflow ultrasonic flow measurement system and its ability to achieve increased accuracy in measuring feedwater flow.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on January 25, 2001 (66 FR 7814). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (66 FR 33583).

For further details with respect to the action see (1) the application for amendment dated December 1, 2000, as supplemented by letters dated February 12, May 7, and May 14, 2001, (2) Amendment No. 131 to License No. NPF–57; (3) the Commission's related Safety Evaluation; and (4) the Commission's Environmental Assessment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737 or by email to pdr@nrc.gov.

Dated at Rockville, Maryland, this 30th day of July 2001.

For the Nuclear Regulatory Commission.

**Richard B. Ennis,**

*Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 01–19415 Filed 8–2–01; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Issuance, Availability of Regulatory Guide, Standard Review Plan, and Generic Aging Lessons Learned (GALL) Report

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is issuing Regulatory Guide 1.188, ''Standard Format and Content for Applications to Renew Nuclear Power Plant Operating Licenses''; NUREG–1800, ''Standard Review Plan for the Review of License Renewal Applications for Nuclear Power Plants'' (SRP-LR); and NUREG–1801, ''Generic Aging Lessons Learned (GALL) Report.'' These documents describe methods acceptable to the NRC staff for implementing the license renewal rule, as well as techniques used by the NRC staff in evaluating applications for license renewals. The draft versions of these documents were issued for public comment on August 31, 2000 (64 FR 53047). The staff assessment of public comments is being issued as NUREG–1739, ''Analysis of Public Comments on the Improved License Renewal Guidance Documents.''

**ADDRESSES:** Electronic copies are available in NRC's Electronic Reading Room accessible from the NRC Web site <*http://www.nrc.gov*>. Regulatory Guide 1.188 is under ADAMS Accession Number ML012010322; NUREG–1800 (SRP-LR) is under ADAMS Accession number ML012070413; NUREG–1801, the GALL Report, is under ADAMS Accession numbers ML012060392 (Volume 1) and ML012060545 (Volume 2); the NEI 95–10 (Revision 3) is under ADAMS Accession number ML011100576; and NUREG–1739 (Analysis of Public Comments) is under ADAMS Accession number ML012080104.

Copies of NUREG series documents are available at current rates from the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328; telephone (202)512–1800; or from the National Technical Information Service (NTIS) at 5285 Port Royal Road, Springfield, VA 22161; telephone (800)553–6847; <http://www.ntis.gov/ordernow>. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, OCIO, USNRC, Washington, DC 20555–0001, or by fax to (301)415–2289, or by email to <*DISTRIBUTION@NRC.GOV*>. Active guides may also be purchased from the NTIS on a standing order basis. Details on this service may be obtained by contacting NTIS, Copies are available for inspection or copying for a fee from the NRC Public Document Room at 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301)415–4737 or (800)397–4209; fax (301)415–3548; email is PDR@NRC.GOV. These license renewal guidance documents are not copyrighted, and Commission approval is not required to reproduce them.

**FOR FURTHER INFORMATION CONTACT:** Raj Anand, Office of Nuclear Reactor Regulation, Mail Stop O–12G15, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone (301) 415–1146, or email <*RKA@NRC.GOV*>.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Guide for License Renewal

Regulatory Guide 1.188 is being issued as guidance for the license renewal rule. This regulatory guide provides guidance on the format and content acceptable to the NRC staff for structuring and presenting the information to be compiled and submitted in an application for renewal of a nuclear power plant operating license. Regulatory Guide 1.188 endorses the use of the Nuclear Energy Institute (NEI) guidance document, Revision 3 of NEI 95–10, ''Industry Guideline for Implementing the Requirements of 10 CFR Part 54—The License Renewal Rule,'' March 2001, as an acceptable method for preparing an application that complies with the requirements of the license renewal rule.

Regulatory Guide 1.188 was issued in draft form as Draft Regulatory Guides DG–1104 and DG–1047 which were issued for public comment in August 2000 and in August 1996, respectively, to propose endorsement of an earlier version of NEI 95–10.

Regulatory Guide 1.188 and NEI 95–10 provide guidance on the contents of an application for license renewal that includes —

(1) Required general information concerning the applicant and the plant;

(2) Information contained in the integrated plant assessment;

(3) An evaluation of time-limited aging analyses (TLAAs);

(4) A supplement to the Final Safety Analysis Report (FSAR);

(5) Technical specification changes and their justification; and

(6) A supplement to the environmental report.

Specifically, guidance is provided for—

(1) Identifying the structures and components subject to aging management review;

(2) Ensuring that the effects of aging are managed;

(3) Identifying and evaluating TLAAs;

(4) Establishing the format and content of the license renewal application; and

(5) Preparing an FSAR supplement.

As indicated in Revision 3 of NEI 95–10, NEI intends that NEI 95–10 be consistent with the GALL report and the SRP-LR.

### Standard Review Plan for License Renewal

The NRC staff also has revised a SRP-LR, NUREG–1800, that contains guidance to NRC staff reviewers on performing safety reviews of applications submitted to renew licenses of nuclear power plants in accordance with the license renewal rule. The SRP-LR contains four major chapters: (1) Administrative Information, (2) Scoping and Screening Methodology for Identifying Structures and Components Subject to Aging Management Review, and Implementation Results, (3) Aging Management Review Results, and (4) Time-Limited Aging Analyses. In addition, three Branch Technical Positions are in an appendix to the SRP-LR.

During the initial license renewal reviews, the NRC and the industry recognized that most of the existing programs at the plants were adequate to manage aging effects for license renewal without change. The Commission, by a staff requirements memorandum (SRM) dated August 27, 1999, directed the NRC staff to focus the review guidance in the SRP–LR on existing programs that should be augmented for license renewal. The NRC staff developed the GALL report that evaluates existing programs generically to document the basis for determining when existing programs are adequate without change and when existing programs should be augmented for license renewal. The

SRP–LR incorporates the GALL report by reference.

**Generic Aging Lessons Learned Report**

The GALL report, NUREG–1801, presents the aging management review results in a table format. The adequacy of the generic aging management programs in managing certain aging effects for particular structures and components is evaluated based on the review of 10 program attributes: scope of the program, preventive actions, parameters monitored or inspected, detection of aging effects, monitoring and trending, acceptance criteria, corrective actions, confirmation process, administrative controls, and operating experience. If the evaluation determines that a program is adequate to manage certain aging effects for particular structures and components without change, the GALL report indicates that no further NRC staff evaluation is recommended for license renewal. Otherwise, it recommends areas in which the NRC staff should focus its review.

The GALL report is a technical basis document for the SRP–LR. The GALL report should be treated in the same manner as an approved topical report that is applicable generically. An applicant may reference the GALL report in a license renewal application to demonstrate that the applicant's programs at its facility correspond to those reviewed and approved in the GALL report and that no further NRC staff review is required. If the material presented in the GALL report is applicable to the applicant's facility, the NRC staff would find the applicant's reference to the GALL report acceptable. In making this determination, the NRC staff will consider whether the applicant has identified specific programs described and evaluated in the GALL report. The NRC staff will not repeat its review of the substance of the matters described in the GALL report; rather, the NRC staff will ensure that the applicant verifies that the approvals set forth in the GALL report for generic programs apply to the applicant's programs. The focus of the NRC staff review will be on augmented programs for license renewal. The NRC staff will also review information that is not addressed in the GALL report, or is otherwise different from that in the GALL report.

**Analysis of Public Comments on the Improved License Renewal Guidance Documents**

On August 31, 2000, the NRC announced (65 FR 53047) the issuance for public comment and availability of Draft Regulatory Guide DG–1104, ''Standard Format and Content for Applications to Renew Nuclear Power Plant Operating Licenses''; a draft ''Standard Review Plan for the Review of License Renewal Applications for Nuclear Power Plants'' (SRP–LR); and a draft ''Generic Aging Lessons Learned (GALL) Report.'' DG–1104 proposed to endorse NEI 95–10, Rev. 2, ''Industry Guideline for Implementing the Requirements of 10 CFR Part 54—The License Renewal Rule.'' The NRC also announced a public workshop that was held on September 25, 2000, to facilitate gathering public comment on the draft documents. Written comments were received from over 128 commenters with the breakdown being 101 individuals, 15 public interest groups, and 12 industry groups (law firms, utilities, and the Nuclear Energy Institute). The staff also held public meetings with stakeholders to discuss their comments.

NUREG–1739 contains the NRC response to stakeholders' comments. The dispositions are prepared in a table format and contained in five appendices. Appendix A addresses the participant comments from the license renewal public workshop on September 25, 2000; Appendix B addresses the specific written comments submitted by NEI; Appendix C addresses the written comments submitted by various stakeholders such as the Union of Concerned Scientists, utilities, and private citizens; Appendix D addresses five Union of Concerned Scientists reports; and Appendix E addresses the Advisory Committee on Reactor Safety (ACRS) consultants' structural and electrical comments.

Dated at Rockville, Maryland, this 27th day of July 2001.

For the Nuclear Regulatory Commission.

**David B. Matthews,**

*Director, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.*

[FR Doc. 01–19417 Filed 8–2–01; 8:45 am]

BILLING CODE 7590–01–P

## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

*Summary of Proposal(s):*

(1) *Collection title:* Representative Payee Monitoring.

(2) *Form(s) submitted:* G–99a, G–99c.

(3) *OMB Number:* 3220–0151.

(4) *Expiration date of current OMB clearance:* 10/30/2001.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 6,000.

(8) *Total annual responses:* 6,535.

(9) *Total annual reporting hours:* 2,032.

(10) *Collection description:* Under Section 12(a) of the Railroad Retirement Act, the RRB is authorized to select, make payments to, and to conduct transactions with an annuitant's relative or some other person willing to act on behalf of the annuitant as a representative payee. The collection obtains information needed to determine if a representative payee is handling benefit payments in the best interest of the annuitant.

**FOR FURTHER INFORMATION CONTACT:** Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Marcie Brown (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

**Chuck Mierzwa,**

*Clearance Officer.*

[FR Doc. 01–19396 Filed 8–2–01; 8:45 am]

BILLING CODE 7905–01–M

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

Extension: Form N–5, SEC File No. 270–172, OMB Control No. 3235–0169, Form N–8A, SEC File No. 270–135, OMB Control No. 3235–0175, Form N–8B–2, SEC File No. 270–186, OMB Control No. 3235–0186.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*), the Securities and Exchange Commission

(''Commission'') has submitted to the Office of Management and Budget (''OMB'') requests for extension of the previously approved collections of information discussed below.

**Form N–5—Registration Statement of Small Business Investment Companies Under the Securities Act of 1933 and the Investment Company Act of 1940**

Form N–5 is the integrated registration statement form adopted by the Commission for use by a small business investment company which has been licensed as such under the Small Business Investment Act of 1958 and has been notified by the Small Business Administration that the company may submit a license application, to register its securities under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] (''Securities Act''), and to register as an investment company under section 8 of the Investment Company Act of 1940 [15 U.S.C. 80a-1 *et seq.*] (''Investment Company Act''). The purpose of registration under the Securities Act is to ensure that investors are provided with material information concerning securities offered for public sale that will permit investors to make informed decisions regarding such securities. The Commission staff reviews the registration statements for the adequacy and accuracy of the disclosure contained therein. Without Form N–5, the Commission would be unable to carry out the requirements of the Securities Act and Investment Company Act for registration of small business investment companies. The respondents to the collection of information are small business investment companies seeking to register under the Investment Company Act and to register their securities for sale to the public under the Securities Act. The estimated number of respondents is two and the proposed frequency of response is annually. The estimate of the total annual reporting burden of the collection of information is approximately 352 hours per respondent, for a total of 704 hours. Proving the information on Form N–5 is mandatory. Responses will not be kept confidential.

**Form N–8A—Notification of Registration of Investment Companies**

Form N–8A is the form that investment companies file to notify the Commission of the existence of active investment companies. After an investment company has filed its notification of registration under section 8(a) of the Investment Company Act, the company is then subject to the provisions of the Investment Company Act which govern certain aspects of its organization and activities, such as the composition of its board of directors and the issuance of senior securities. Form N–8A requires an investment company to provide its name, state of organization, form of organization, classification, if it is a management company, the name and address of each investment adviser of the investment company, the current value of its total assets and certain other information readily available to the investment company. If the investment company is filing simultaneously its notification of registration and registration statement, Form N–8A requires only that the registrant file the cover page (giving its name, address and agent for service of process) and sign the form in order to effect registration.

The Commission uses the information provided in the notification on Form N–8A to determine the existence of active investment companies and to enable the Commission to administer the provisions of the Investment Company Act with respect to those companies. Each year approximately 263 investment companies file a notification on Form N–8A, which is required to be filed only once by an investment company. The Commission estimates that preparing Form N–8A requires an investment company to spend approximately one hour so that the total burden of preparing Form N–8A for all affected investment companies is 263 hours. The collection of information on Form N–8A is mandatory. The information provided on Form N–8A is not kept confidential.

**Form N–8B–2—Registration Statement of Unit Investment Trusts That Are Currently Issuing Securities**

Form N–8B–2 is the form used by unit investment trusts (''UITs'') that are currently issuing securities, including UITs that are issuers of periodic payment plan certificates and UITs of which a management investment company is the sponsor or depositor, to comply with the filing and disclosure requirements imposed by section 8(b) of the Investment Company Act. Form N–8B–2 requires disclosure about the organization of a UIT, its securities, the trustee, the personnel and affiliated persons of the depositor, the distribution and redemption of securities, and financial statements. The Commission uses the information provided in the collection of information to determine compliance with section 8(b) of the Investment Company Act.

Based on the Commission's industry statistics, the Commission estimates that there would be approximately 24 initial filings on Form N–8B–2 and 11 post-effective amendment filings to the form. The Commission estimates that each registrant filing an initial Form N–8B–2 would spend 44 hours in preparing and filing the form and that the total hour burden for all initial Form N–8B–2 filings would be 1,056 hours. Also, the Commission estimates that each UIT filing a post-effective amendment to Form N–8B–2 would spend 16 hours in preparing and filing the amendment and that the total hour burden for all post-effective amendments to the Form would be 176 hours. By combining the total hour burdens estimated for initial Form N–8B–2 filings and post-effective amendments filings to the form, the Commission estimates that the total annual burden hours for all registrants on From N–8B–2 would be 1,232. The information provided on Form N–8B–2 is mandatory. The information provided on Form N–8B–2 will not be kept confidential.

Estimates of the burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 24, 2001.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–19430 Filed 8–2–01; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon Written Requests, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

*Extension:* Rule 15a–4, SEC File No. 270–7, OMB Control No. 3235–0010

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 15a–4 under the Securities Exchange Act of 1934 (the ''Exchange Act'') permits a natural person member of a securities exchange who terminates his or her association with a registered broker-dealer to continue to transact business on the exchange while the Commission reviews his or her application for registration as a broker-dealer if the exchange files a statement indicating that there does not appear to be any ground for disapproving the application. The total annual burden imposed by Rule 15a–4 is approximately 106 hours, based on approximately 25 responses (25 Respondents × 1 Response/Respondent), each requiring approximately 4.23 hours to complete. The total annual cost burden is $5875, based on approximately 25 responses, each costing approximately $235 to complete.

The Commission uses the information disclosed by applicants in Form BD: (1) To determine whether the applicant meets the standards for registration set forth in the provisions of the Exchange Act; (2) to develop a central information resource where members of the public may obtain relevant, up-to-date information about broker-dealers, municipal securities dealers and government securities broker-dealers, and where the Commission, other regulators and SROs may obtain information for investigatory purposes in connection with securities litigation; and (3) to develop statistical information about broker-dealers, municipal securities dealers and government securities broker-dealers. Without the information disclosed in Form BD, the Commission could not effectively implement policy objectives of the Exchange Act with respect to its investors protection function.

The statement submitted by the exchange assures the Commission that the applicant, in the opinion of the exchange, is qualified to transact business on the exchange during the time that the applications are reviewed.

Completing and filing Form BD is mandatory in order for a natural person member of a securities exchange who terminates his or her association with a registered broker-dealer to obtain the 45-day extension under Rule 15a–4. Compliance with Rule 15a–4 does not involve the collection of confidential information. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 25, 2001.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–19431 Filed 8–2–01; 8:45 am]

BILLING CODE 8010–01–M

---

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–25094]**

### Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

July 27, 2001.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of July, 2001. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant 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 21, 2001, and should be accompanied by proof of service on the applicant, 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 Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0506.

**Hambrecht & Quist Fund Trust [File No. 811–9383]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On March 23, 2001, applicant transferred its assets to J.P. Morgan H&Q IPO & Emerging Company Fund, a series of Mutual Fund Investment Trust, based on net asset value. Expenses incurred in connection with the reorganization were paid by Chase Manhattan Bank.

*Filing Date:* The application was filed on June 29, 2001.

*Applicant's Address:* One Bush Street, San Francisco, CA 94104.

**Cohen & Steers Realty Income Fund, Inc. [File No. 811–5605]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On May 31, 2001, applicant transferred its assets to Cohen & Steers Total Return Realty Fund, Inc. based on net asset value. Expenses of approximately $313,000 incurred in connection with the reorganization were shared equally by applicant and the acquiring fund.

*Filing Date:* The application was filed on June 25, 2001.

*Applicant's Address:* 757 Third Avenue, New York, NY 10017.

**Jakarta Growth Fund, Inc. [File No. 811–6035]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 11, 2001, applicant transferred its assets to The Indonesia Fund, Inc. based on net asset value. Expenses of $157,000 incurred in connection with the reorganization were paid by applicant and the acquiring fund.

*Filing Date:* The application was filed on June 20, 2001.

*Applicant's Address:* Nomura Asset Management U.S.A. Inc., 180 Maiden Lane, New York, NY 10038.

**Fasciano Fund, Inc. [File No. 811–5602]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On March 23, 2001, applicant transferred its assets to Neuberger Berman Fasciano Fund, a series of Neuberger Berman Equity Funds, based on net asset value. Expenses of $94,279 incurred in connection with the reorganization were paid by Fasciano Company, Inc., applicant's investment adviser, and Neuberger Berman Management Inc.

*Filing Date:* The application was filed on July 10, 2001.

*Applicant's Address:* 190 South La Salle Street, Suite 2800, Chicago, IL 60602.

**ZFNB Asset Fund, Inc. [File No. 811–10033]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On July 3, 2001, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of approximately $8,000 incurred in connection with the liquidation were paid by applicant.

*Filing Date:* The application was filed on July 3, 2001.

*Applicant's Address:* One South Main, Suite 1380, Salt Lake City, UT 84111.

**CUFUND [File No. 811–6488]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On April 30, 2001, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of approximately $14,000 incurred in connection with the liquidation were paid by applicant.

*Filing Date:* The application was filed on July 2, 2001.

*Applicant's Address:* 101 Federal Street, Boston, MA 02112.

**NBT Investment Company, Inc. [File No. 811–9967]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 25, 2001, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of approximately $8,000 incurred in connection with the liquidation were paid by applicant.

*Filing Date:* The application was filed on June 26, 2001.

*Applicant's Address:* 52 S. Broad Street, Norwich, NY 13815.

**Midas Magic, Inc. [File No. 811–4534]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On April 30, 2001, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $2,000 incurred in connection with the liquidation were paid by applicant. Applicant has retained $23,037 to cover outstanding debts and liabilities which is held in cash by applicant's custodian, State Street Bank and Trust.

*Filing Date:* The application was filed on June 28, 2001.

*Applicant's Address:* 11 Hanover Sq., New York, NY 10005.

**Prudential Global Genesis Fund, Inc. [File No. 811–5248]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On May 30, 2001, applicant transferred its assets to The Prudential Global Growth Fund, a series of Prudential World Fund, Inc., based on net asset value. Expenses of $50,000 incurred in connection with the reorganization were paid pro rata by applicant and the acquiring fund.

*Filing Date:* The application was filed on June 15, 2001.

*Applicant's Address:* Gateway Center Three, 100 Mulberry Street, Newark, NJ 07102–4077.

**CypressTree Senior Floating Rate Fund, Inc. [File No. 811–8309]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On May 11, 2001 and May 31, 2001, applicant transferred its assets to North American Senior Floating Rate Fund, Inc. based on net asset value. Expenses of $135,000 incurred in connection with the reorganization were paid by American General Asset Management Corp., applicant's investment adviser.

*Filing Date:* The application was filed on June 18, 2001.

*Applicant's Address:* 286 Congress Street, Boston, MA 02210.

**Reserve Institutional Trust [File No. 811–3141]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On May 25, 2001, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses incurred in connection with the liquidation were paid by Reserve Management Co., Inc., applicant's investment adviser.

*Filing Date:* The application was filed on June 14, 2001.

*Applicant's Address:* 1250 Broadway, New York, NY 10001–3701.

**The Fleming Emerging Europe Fund, Inc. [File No. 811–8400]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

*Filing Date:* The application was filed on May 24, 2001, and amended on June 27, 2001, July 3, 2001, and July 5, 2001.

*Applicant's Address:* c/o John B. Frisch, Esq., Miles & Stockbridge, 10 Light Street, Baltimore, MD 21202–1487.

**Bartlett Capital Trust [File No. 811–3613]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On March 16, 2001, Bartlett Basic Value Fund, a series of applicant, transferred its assets to Legg Mason Balanced Trust, a series of Legg Mason Investors Trust, Inc., based on net asset value. On March 23, 2001, Bartlett Value International Fund, a series of applicant, transferred its assets to Legg Mason Europe Fund, a series of Legg Mason Global Trust, Inc., based on net asset value. Expenses of $178,298 incurred in connection with the reorganization were paid by Legg Mason Wood Walker, Incorporated.

*Filing Date:* The application was filed on June 19, 2001.

*Applicant's Address:* 36 East Fourth St., Cincinnati, OH 45202.

**Worldwide DollarVest Fund, Inc. [File No. 811–7127]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On November 6, 2000, applicant transferred its assets to Merrill Lynch Emerging Market Debt Fund, Inc., based on net asset value. Expenses of $212,720 incurred in connection with the reorganization were paid by the surveying fund.

*Filing Date:* The application was filed on May 11, 2001 and amended on July 11, 2001.

*Applicant's Address:* 800 Scudders Mill Rd., Plainsboro, NJ 08536.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–19432 Filed 8–2–01; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–44594; File No. SR–Amex–2001–27]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to the Prohibition of the Entry of Certain Limit Orders and Electronically Generated Orders Into the Exchange's Order Routing System

July 26, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder, [2] notice is hereby given that on May 4, 2001, the American Stock Exchange LLC (the ''Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On July 16, 2001, the Exchange submitted Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Rules 1000, 1000A and 1200 to restrict the entry of certain limit orders and orders that are created and communicated electronically without manual input into the Exchange's order routing and execution systems. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed an comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

In February 2001, the Commission issued a notice of filing and immediate effectiveness of a proposed rule change submitted by the Exchange that restricted the entry of certain option limit orders and option orders created and communicated electronically without manual input into the Exchange's electronic order routing and delivery systems.[4] The Exchange is not proposing to adopt the same restrictions for some of the other equity derivative products it currently trades. Specifically, the Exchange proposes that the new rules would apply to the following equity derivative products: Exchange Traded Funds (''ETFs'') such as Standard & Poors Depositary Receipts (''SPDRS''), DIAMONDS and Nasdaq 100 Tracking Stock (''QQQ''), and Trust Issued Receipts (''TIRs'' such as Holding Company Depositor Receipts (''HOLDRS'').

The proposed amendments to Amex Rules 1000, 1000A and 1200 would restrict the entry of certain limit orders and orders that are created and communicated electronically without manual input into the Exchange's electronic order routing and delivery system (Amex Order File—''AOF''), which routes orders of up to 99,900 shares of each equity derivative to the Exchange's electronic order execution and processing systems (*i.e.,* Point of Sale Specialist's Book), under certain circumstances as described below.

a. *Limit Orders*

Under the proposed rule, members, acting as either principal or agent, would be prohibited from entering limit orders into the electronic order routing system if such orders are for the account or accounts of the same or related beneficial owners, and the limit orders are entered in such a manner that the member or the beneficial owner(s) effectively is operating as a market make by holding itself out as willing to buy and sell such securities on a regular or continuous basis. The proposed rules provide that in determining whether a member or beneficial owner effectively is operating as market maker, the Exchange would consider, among other things, the simultaneous or near-simultaneous entry of limit orders to buy and sell the same security; the multiple acquisition and liquidation of positions in the security during the same day; and the entry of multiple limit orders at different prices in the same security.

b. *Electronically Created and Communicated Orders*

The Exchange also proposes to adopt rules that prohibit members from entering orders that are created and communicated electronically without manual input, if such orders are eligible for execution through the Exchange's automatic execution system.[5] The Exchange would consider orders entered by customers or associated persons of members to involve manual input if the terms of the order are entered into an order-entry screen or there is a manual selection of a displayed order against which an off-setting order should be sent. The Exchange notes that under the proposed rules, members would not be prohibited from electronically communicating to the Exchange orders entered by customers into front-end communication systems (*e.g.,* Internent gateways, online networks, etc.).

The Exchange states that its business model depends upon specialists and registered options traders (''ROTs'') who act as market makers, for competition and liquidity. The Exchange believes that to encourage participation by these market makers, it needs to ensure that other members, and their customers, cannot use benefits granted to them, such as automatic execution, priority of bids and offers and firm quote guarantees for customer orders, to compete on preferential terms within the Exchange's automated systems. The Exchange represents that the proposed rule would prevent members who are not specialists or ROTs from reaping the benefits of market making activities without any of the concomitant obligations, such as providing continuous quotations during all market conditions. The Exchange represents that the proposed rule is designed to prevent certain members and customers from obtaining an unfair advantage by acting as unregistered specialists and/or ROTs while having priority over the specialists and/or ROTs by virtue of their customer status.

The Exchange believes that permitting members or customers to enter multiple limit orders to such an extent that they are effectively acting as market makers in an option, while at the same time giving them priority over all other

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Claire McGrath, Vice President and Special Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 13, 2001 (''Amendment No. 1''). In Amendment No. 1, the Exchange corrected technical errors in the proposed prohibition on orders that are created and communicated electronically without manual input to state that such orders may not be entered into the Exchange's order routing system if they are eligible for automatic execution.

[4] *See* Securities Exchange Act Release No. 43938 (February 7, 2001), 66 FR 10539 (February 15, 2001).

[5] *See* Amendment No. 1, *supra* note 3.

orders on the book, gives such members and customers an inordinate advantage over other market participants. In addition, the Exchange believes that allowing electronically generated and communicated orders to be routed directly through the Exchange systems and to Auto-Ex would give customers with such electronic systems a significant advantage over specialists and registered traders. The Exchange represents that these circumstances reduce the incentive to engage in market making on the Exchange reducing liquidity and competition and could under cut the Exchange's business model.

Lastly, the Exchange notes that computer generated orders can still be sent to the Exchange for execution; however, they may not be sent for automatic execution through the Exchange's order routing system.[6] Instead, such orders will be routed to the trading crowd and represented in open outcry.

2. Basis

The proposed rule change is consistent with Section 6(b) of the Act[7] in general and furthers the objectives of Section 6(b)(5)[8] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2001–27 and should be submitted by August 24, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–19377 Filed 8–2–01; 8:45 am]

**BILLING CODE 8010–01–M**

[6] *See* Amendment No. 1, *supra* note 3.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

---

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–44604; File No. SR–Amex–2001–43]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Changed by the American Stock Exchange LLC Withdrawing From the Joint-Exchange Options Plan

July 27, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 28, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Amex proposes to withdraw its participation in the Joint-Exchange Options Plan (''JEOP'') effective upon the approved by the Commission of the Options Listing Procedures Plan (''OLPP'').

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

In September 1991, the Commission approved the JEOP,[3] which provided specific procedures for the selecting, listing, challenging, and arbitrating the eligibility of new standardized equity options. At the end of last year, the current options exchanges[4] and the Options Clearing Corporations (''OCC'') began discussions on replacing the JEOP.[5] On January 11, 2001, the five

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 2540.19b–4.

[3] The Amex, Chicago Board Options Exchange, Inc. (''CBOE''), New York Stock Exchange, Inc., Pacific Exchange, Inc. (''PCX''), and Philadelphia Stock Exchange, Inc. (''Phlx'') each filed the JEOP as a proposed rule change. *See* Securities Exchange Act Release No. 29698 (September 17, 1991) 56 FR 48594 (September 25, 1991).

[4] The International Securities Exchange (''ISE''), which began trading standardized options in 2000, in adopted elements of the JEOP as part of its rules.

[5] The Commission directed the Amex, the CBOE, the PCX, and the Phlx to amend the JEOP to eliminate advance notice to other markets of the intention to list a new or existing option; to eliminate any provisions of the JEOP that prevent a market from commencing to list or trade any option listed on another market or an option that another market has expressed an intent to list; and

options exchanges and the OCC submitted the OLPP, which sets forth new procedures for the listing and trading of standardized options.[6] In may instances the new procedures set forth in the OLPP conflict with procedures in the JEOP. On July 6, 2001, the Commission approved the OLPPP and its procedures now govern the listing and trading of standardized options.[7] Therefore, participation in the JEOP is now unnecessary and inappropriate. Consequently, the Exchange proposes to withdraw from participation in the JEOP.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[8] in general and furthers the objectives of Section 6(b)(5)[9] in particular in that it is designed to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Amex does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing, or such shorter time as designated by the Commission, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)[11] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission accelerate the operative date and to waive the five day pre-filing requirement so that the proposed rule change may take effect upon approval of the OLPP by the Commission. The Commission believes that it is consistent with the protection of investors and the public interest and therefore finds good cause to accelerate the operative date of the proposed rule change and to waive the five day pre-filing requirement. Acceleration of the operative date and waiving the pre-filing requirement will permit the Exchange to implement the OLPP without undue delay. For these reasons, the Commission finds good cause to designate that the proposal became operative immediately upon Commission approval of the OLPP.[12]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR–Amex–2001–43 and should be submitted by August 24, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–19383 Filed 8–2–01; 8:45 am]

BILLING CODE 8010–01–M

to eliminate any provisions of the JEOP that allow one market to delay the commencement of trading of an option by another market. *See* Section IV.B.a of the Order Instituting Public Administrative Proceedings Pursuant to section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000) (''Order'').

[6] *See* Securities Exchange Act Release No. 44287 (May 10, 2001) 66 FR 27184 (May 16, 2001).

[7] *See* Securities Exchange Act Release No. 36809 (July 13, 2001).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19–4(f)(6).

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–44607; File No. SR–CBOE–2001–40]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Establishing New Exchange Fees Based on the Number of Order Cancellations Routed Through its Automated Order Routing System

July 27, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder, notice is hereby given that on July 16, 2001, the Chicago Board Options Exchange Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The CBOE proposes to establish a new fee based upon the number of order cancellations that are routed to the CBOE through its automated Order Routing System (''ORS'').

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is proposing to establish a fee to deal with various operational problems and costs resulting from the practice of immediately following orders routed through the Exchange's automated ORS with a cancel request. Since these order frequently come in large numbers, components of the ORS, such as the Public Automated Routing (''PAR'') system, can very quickly become backlogged, which increases Exchange costs and adversely impacts public customers, their clearing firms, and Exchange designed primary market-makers (''DPMs'') by making the execution of other customer orders less timely. A high volume of cancellations sent through the ORS to PAR, or to the Exchange's E-Book or ''Live Ammo'' systems, also increases Exchange costs by requiring the Exchange to spend increased amounts on systems and other hardware to process increased order traffic flow.

Under the proposed fee, the executing Clearing Member would be changed $1.00 for every order that it cancels through the ORS in any month where the total number of cancellations sent by the executing Clearing Member exceeds the total number of orders that same firm executed through ORS in that same month. This fee will not apply to executing Clearing Members that cancel fewer than 500 orders through ORS in a given month. The Exchange believes that the fee will help ease backlogs on ORS and particularly PAR, and fairly allocate the related costs.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the act,[3] in general, and Section 6(b)(4) of the Act,[4] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited nor received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and subparagraph (f)(2) of Rule 19b–4[6] thereunder, because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[7]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2001–40 and should be submitted by August 24, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–19380 Filed 8–2–01; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] *See* 15 U.S.C. 78(b)(3)(C).

[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–44602; File No. SR–CBOE–2001–38]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Withdrawing From the Joint-Exchange Options Plan

July 27, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 2, 2001, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The CBOE proposes to withdraw from the Joint-Exchange Options Plan (''JEOP''), previously approved by the Commission on September 17, 1991.[3] The CBOE proposes to withdraw from the JEOP effective as of the date that the Commission approves the Options Listing Procedures Plan (''OLPP'').[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 29698 (September 17, 1991), 56 FR 48594 (September 25, 1991).

[4] The Commission directed the American Stock Exchange LLC (''Amex''), the CBOE, the Pacific Exchange, Inc. (''PCX''), and the Philadelphia Stock Exchange, Inc. (''Phlx'') to amend the JEOP to eliminate advance notice to other markets of the intention to list a new or existing option; to eliminate any provisions of the JEOP that prevent a market from commencing to list or trade any option listed on another market or an option that another market has expressed an intent to list; and to eliminate any provisions of the JEOP that allow one market to delay the commencement of trading of an option by another market. *See* Section IV.B.a of the Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The CBOE, Amex, PCX, and Phlx, along with the International Securities Exchange and The Options Clearing Corporation, filed with the Commission a proposed OLPP on January 11, 2001.[5] The OLPP is intended to replace and supercede the JEOP. The CBOE now proposes to withdraw from the JEOP, effective as of the date that the Commission approved the proposed OLPP. The Commission approved the OLPP on July 6, 2001.[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[7] in general and furthers the objectives of Section 6(b)(5)[8] in particular in that it is designed to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing, or such shorter time as designated by the Commission, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)[10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission accelerate the operative date and to waive the five day pre-filing requirement so that the proposed rule change may take effect upon approval of the OLPP by the Commission. The Commission believes that it is consistent with the protection of investors and the public interest and therefore finds good cause to accelerate the operative date of the proposed rule change and to waive the five day pre-filing requirements. Acceleration of the operative date and waiving the pre-filing requirement will permit the Exchange to implement the OLPP without undue delay. For these reasons, the Commission finds good cause to designate that the proposal become operative immediately upon Commission approval of the OLPP.[11]

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No. SR–CBOE–2001–38 and should be submitted by August 24, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–19381 Filed 8–2–01; 8:45 am]

BILLING CODE 8010–01–M

and Imposing Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000) (''Order'').

[5] *See* Securities Exchange Act Release No. 44287 (May 10, 2001), 66 FR 27184 (May 16, 2001).

[6] *See* Securities Exchange Act Release No. 44521 (July 6, 2001), 66 FR 36809 (July 13, 2001).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19–4(f)(6).

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

---

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–44605; File No. SR–ISE–2001–21]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange LLC Repealing Listing

July 27, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 12, 2001, the International Securities Exchange LLC (''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to repeal its rules providing procedures for the listing of new options.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The test of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange's application for registration as a national securities exchange included rules governing the listing of new options (''ISE Listing Rules'').[3] With some modifications, these rules paralleled the Joint-Exchange Options Plan (''JEOP'') that the other options exchanges had filed with the Commission.[4] These rules became effective upon the ISE's registration as a national securities exchange.[5] Thereafter, the ISE, together with the four other options exchanges and the Options Clearing Corporation, submitted as Options Listing Procedures Plan (''OLPP'') establishing common listing procedures for the five exchanges.[6] The Commission recently approved the OLPP,[7] rendering the ISE Listing Rules obsolete. The purpose of the filing is to repeal the ISE Listing Rules.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[8] in general and furthers the objectives of Section 6(b)(5)[9] in particular in that it is designed to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The ISE does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)[11] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

A proposed rule change filed under Rule 19b–4(f)(6)[12] does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if such action in consistent with the protection of investors and the public interest. Because the OLPP is now effective and the ISE Listing Rules are not consistent with the OLPP, the ISE requested that the Commission accelerate the implementation of the proposed rule change so that it may take effect without the five-day notice period and prior to the 30 days specified in Rule 19b–4(f)(6)(iii).[13] The Commission believes that it is consistent with the protection of investors and the public interest and therefore finds good cause to accelerate the operative date of the proposed rule change. Acceleration of the operative date will permit the Exchange to implement the OLPP without undue delay. For these reasons, the Commission finds good cause to designate that the proposal became operative immediately upon filing.[14]

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to the File No. SR–ISE–2001–21 and should be submitted by August 24, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–19376 Filed 8–2–01; 8:45 am]

**BILLING CODE 8010–01–M**

[3] *See* Exhibit B to Amendment No. 2 to the ISE's Form 1, filed with the Commission on February 17, 2000.

[4] In September 1991, the Commission approved the JEOP for the selecting, listing, challenging, and arbitrating the eligibility of new standardized equity options filed by the American Stock Exchange LLC (''Amex''), Chicago Board Options Exchange, Inc. (''CBOE''), New York Stock Exchange, Inc., Pacific Exchange, Inc. (''PCX''), and the Philadelphia Stock Exchange, Inc. (''Phlx''). *See* Securities Exchange Act Release No. 29698 (September 17, 1991), 56 FR 48594 (September 25, 1991).

[5] *See* Securities Exchange Act Release No. 42455 (February 24, 2000); 65 FR 11387 (March 2, 2000).

[6] The Commission directed the Amex, CBOE, PCX, and Phlx to amend the JEOP to eliminate advance notice to other markets of the intention to list a new or existing option; to eliminate any provisions of the JEOP that prevent a market from commencing to list or trade any option listed on another market or an option that another market has expressed an intent to list; and to eliminate any provisions of the JEOP that allow one market to delay the commencement of trading of an option by another market. *See* Section IV.B.a of the Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000).

[7] Securities Exchange Act Release No. 44521 (July 6, 2001), 66 FR 36809 (July 13, 2001).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–44609; File No. SR–NASD–2001–37]**

## Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Clarifying the Extent of Nasdaq's Authority To Halt Trading in a Security in Response to Extraordinary Market Activity

July 27, 2001.

### I. Introduction

On May 11, 2001, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to clarify the extent of Nasdaq's authority to halt trading in a security in response to extraordinary market activity that Nasdaq believes may be caused by the misuse or malfunction of an electronic system that is operated by, or linked to, Nasdaq. Notice of the proposed rule change appeared in the **Federal Register** on May 22, 2001.[3] Nasdaq submitted an amendment to the proposed rule change on July 27, 2001.[4] The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as amended, on a pilot basis through October 27, 2001.

### II. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the proposed Amendment No. 1, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2001–37 and should be submitted by August 24, 2001.

### III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association [5] and, in particular, the requirements of Section 15A of the Act [6] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 15A(b)(6) of the Act [7] because it will provide Nasdaq with clearer authority to respond to and alleviate market disruptions and thereby protect investors and the public interest.

The Commission finds good cause for accelerating approval of Amendment No. 1 to the proposed rule change prior to the thirtieth day after publication in the **Federal Register.** The Commission notes that Amendment No. 1 makes no substantive changes, but merely requests that the Commission approve the proposed rule change on a three month pilot basis. Accordingly, the Commission finds that good cause exists, consistent with Sections 15A(b)(6) of the Act,[8] and Section 19(b) of the Act [9] to accelerate approval of Amendment No. 1 to the proposed rule change.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act [10], that the proposed rule change (SR–NASD–2001–37), as amended, be, and it hereby is, approved on a pilot basis through October 27, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–19435 Filed 8–2–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44307 (May 15, 2001), 65 FR 28209.

[4] Letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Alton Harvey, Division of Market Regulation, dated July 27, 2001 (''Amendment No. 1''). Amendment No. 1 requests the Commission to approve the proposed rule change on a three month pilot basis expiring on October 27, 2001.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78o–3.

[7] 15 U.S.C. 78o–3(b)(6).

[8] 15 U.S.C. 78o–3(b)(6).

[9] 15 U.S.C. 78s(b).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–44616; File No. SR–NYSE–2001–08]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 to the Proposed Rule Change by the New York Stock Exchange, Inc. Amending Its Rules To Provide for the Trading of Exchange-Traded Funds on an Unlisted Trading Privileges Basis

July 30, 2001.

### I. Introduction

On April 25, 2001, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend certain NYSE rules and policies to accommodate the trading of certain exchange-traded funds (''ETFs'') on an unlisted trading privileges (''UTP'') basis. On May 22, 2001, the NYSE filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change and Amendment No. 1 were published in the **Federal Register** on June 5, 2001.[4] No comments were received on the proposal, as amended. On July 18, 2001, the NYSE filed Amendment No. 2 to the proposed rule change.[5] On July 27, 2001, the NYSE filed Amendment No. 3 to the proposed rule change.[6] This order

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 21, 2001 (''Amendment No. 1''). In Amendment No. 1, the NYSE amended the proposed rule text to reflect the correct wording of current NYSE Rule 36.

[4] *See* Securities Exchange Act Release No. 44352 (May 25, 2001), 66 FR 30256 (''Notice'').

[5] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Nancy Sanow, Assistant Director, Division, Commission, dated July 18, 2001 (''Amendment No. 2''). The NYSE withdrew Amendment No. 2 on July 27, 2001.

[6] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Nancy Sanow,

Continued

approves the proposed rule change, as amended. The Commission also seeks comment on Amendment no. 3 from interested persons.

## II. Description of the Proposed Rule Change

The NYSE proposes to amend its rules and policies to accommodate the listing and trading ETFs on a UTP basis. These ETFs may include the NASDAQ 100 Trust (symbol QQQ), Standard and Poor's Depositary Receipts (symbol SPY) and the Dow Industrials DIAMONDS (symbol DIA).

The NYSE proposes to amend the following NYSE rules and policies: NYSE Rule 98, NYSE Rule 36, paragraph (l) of the Guidelines to NYSE Rule 105, NYSE Rule 13, NYSE Rules 104.20 and 104.21, and the NYSE's Market-On-Close/Limit-At-The-Close and Pre-Opening Price Indications Policies.

### *A. NYSE Rule 98*

NYSE Rule 98 provides that affiliates of a specialist organization can receive an exemption from certain rules applicable to specialists, provided that they establish a system of information barriers between themselves and the affiliated specialist. One of the conditions for the NYSE Rule 98 exemption is that the specialist organization be capitalized separately and apart from any affiliate. The Exchange is proposing to delete this requirement in the case of a specialist organization that is registered solely in ETFs. However, a specialist organization that is registered only in ETFs will remain subject to the minimum capital requirements specified in NYSE Rule 104.20.

### *B. NYSE Rule 105*

Currently, Guideline (1) to NYSE Rule 105 prohibits affiliates of specialist units from acting as a primary market marker in the option on a specialty security. The NYSE proposes to permit an affiliate of an NYSE ETF specialist to act in any market making capacity with respect to options on an ETF as long as NYSE Rule 98 information barriers are established.[7] The Exchange also proposes to permit an affiliate of the ETF specialist to act in a market making capacity, but not as a specialist, in the ETF itself on another market center, as long as NYSE Rule 98 information barriers are established.

### *C. NYSE Rules 36.30*

NYSE Rule 36.30 governs the establishment of telephone or electronic communications between the Exchange's trading floor and any other location.[8] The Exchange proposes to permit ETF specialists to use communication devices at the post to enter proprietary orders in options [9] and futures on the ETF, on the ETF itself on another market center, or in component securities of the ETF,[10] and would permit the ETF specialist to obtain market information with respect to ETFs options, futures, and component securities.

### *D. NYSE Rule 13*

NYSE Rule 13 currently provides that stop and stop limit orders in an ETF can be elected by a bid (in the case of an order to buy) or an offer (in the case of an order to sell), provided that the specialist obtains the prior approval of a Floor Governor or two Floor Officials. The Exchange proposes to amend this prior approval requirement for ETFs to require floor official approval only where the bid or offer that would elect a stop or stop limit order is more than 0.10 point away from the last sale and is made for the specialist's dealer account.[11]

### *E. NYSE Rules 104.20 and 104.21*

The Exchange proposes to amend NYSE Rules 104.20 and 104.21 to provide a capital requirement of $500,000 per ETF. A specialist registered only in an ETF would be subject to the $1,000,000 minimum capital requirement of NYSE Rule 104.20.

### *F. NYSE's Market-on-Close/Limit-At-The-Close Policy*

The Exchange proposes that orders in ETFs will not be subject to the Exchange's Market-on-Close (''MOC'')/ Limit-At-The-Close (''LOC'') policy concerning order entry limitations, cancellation of orders during a regulatory halt, imbalance publications, and any other limitations or procedures with respect to MOC/LOC procedures. A MOC/LOC order in an ETF could be permitted to be entered at any time without regard to the limitations of the Exchange's MOC/LOC policies. In addition, the closing price of an ETF will not be subject to publication of imbalances under the Exchange's MOC/ LOC policy. Furthermore, ETFs will trade until 4:15 p.m.[12]

### *G. NYSE's Pre-Opening Price Indications Policy*

Similarly, the Exchange proposes that its policies regarding mandatory dissemination of pre-opening price indications (other than ITS pre-opening notifications) in the case of significant order imbalances and potentially large price dislocation from the prior close will not apply to ETFs.

The Exchange will inform its members and member organizations of these proposed changes to its policies by publication of an Information Memo.

## III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[14] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. The Commission notes that the

Assistant Director, Division, Commission, dated July 27, 2001 (''Amendment No. 3''). In Amendment No. 3, the NYSE withdrew the proposed amendment to NYSE Rule 111; revised the rule text of NYSE Rule 36 to clarify that if an order in a component security of an ETF is executed on the Exchange floor, the order must be in compliance with NYSE Rule 112.20 and Rule 11a2–2(T) under the Act, 17 CFR 240.11a2–2(T), and must be for the purpose of hedging a position in the ETF; and revised its proposed amendment to NYSE Rule 13 to require Floor Official approval in a situation where the bid or offer that would elect a stop or stop limit order is more than 0.10 point away from the last sale and is made for the specialist's dealer account.

[7] As discussed above, the NYSE proposes to eliminate the separate capital requirement with respect to ETF specialists. *See also* Securities Exchange Act Release No. 44175 (April 11, 2001), 66 FR 19825 (April 17, 2001).

[8] Currently, NYSE Rule 36.30 allows specialists to have telephone lines to its off-floor office or its clearing firm for the purpose of entering options or futures hedging orders. The specialist also is permitted to transmit such orders through a member on the floor of the options or futures exchange.

[9] Any proprietary order for an option based on an ETF for which the specialist is registered must comply with the requirements of NYSE Rule 105.

[10] *See* Amendment No. 3, *supra* note 6. Any order in a component security of the ETF that is to be executed on the NYSE floor must be entered and executed in accordance with the principles of Exchange Rule 112.20 and Rule 11a2–2(T) under the Act, 17 CFR 240.11a2–2(T), and must be for the purpose of hedging a position in the ETF.

[11] *See* Amendment No. 3, *supra* note 6. This amendment parallels the specialist's responsibility to obtain floor official approval under NYSE Rule 123A.40 in situations where the specialist is the party to the electing trade.

[12] *But see* Securities Exchange Act Release No. 44595 (July 26, 2001), which amended the time of close for ETFs to 4:05 p.m. on the last business day of each month.

[13] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

proposed amendments to NYSE rules and policies are designed to facilitate the introduction of ETFs trading on the Exchange on a UTP basis.

NYSE Rule 98 provides that, as long as certain information barriers are in place between a specialist and its affiliates, the affiliates of a specialist organization can receive an exemption from certain rules applicable to specialist organization that is registered only in the ETFs, the Exchange has proposed to eliminate the requirement for the NYSE Rule 98 exemption that a specialist organization be capitalized separate and apart from any affiliate. The Commission notes that this amendment merely removes the requirement that specialists and their affiliates keep their capital separate and does not diminish the amount of capital required of the ETF specialists will still be required to be adequately capitalized pursuant to NYSE Rule 104. Further, the Exchange will continue to monitor the adequacy of capital of its ETF specialists through its special allocation committee. The Commission also notes that all other NYSE Rule 98 requirements must be satisfied as a condition to an NYSE Rule 98 exemption.

In addition, the Exchange proposes to revise NYSE Rules 104.20 and 104.21 to provide for a capital requirement of $500,000 per ETF.[15] The Commission finds that the amendments to eliminate the separate capitalization requirement in the limited context noted above and to establish a capital requirement of $500,000 per ETF are consistent with the Act.

Currently, Guideline (1) to NYSE Rule 105 provides that affiliates of a specialist may not act as primary market makers in the options overlying its specialty security. The NYSE proposes to amend Guideline (1) to allow an affiliate of an NYSE specialist to act in any market making capacity in options overlying an ETF, subject to the condition that NYSE Rule 98 information barriers are in place. In addition, the Exchange proposes to allow an affiliate of an ETF specialist to act in any market capacity, other than as a specialist in the ETF itself, on other market centers, as long as NYSE Rule 98 information barriers are in place. The Commission finds that the revision to Guideline (1) of NYSE Rule 105 is consistent with the Act.

The Commission also finds the amendment to NYSE Rule 36.30 to allow ETF specialists to maintain telephone lines at their off-floor offices or clearing firm, to members of options and futures exchanges, and to maintain order entry terminals to be consistent with the Act. ETF specialists will be permitted to enter proprietary options[16] and futures orders, proprietary orders in the ETF on other market centers, and in component securities of the ETF. In addition, specialists will be permitted to obtain market information regarding the ETF, options, and futures on the ETF, and component securities of the ETF.[17] The Commission notes that the specialist entering proprietary orders in a component security of the ETF with the upstairs clearing firm for execution on the floor of the Exchange must enter and execute the orders in accordance with Rule 11a2–2(T) under the Act[18] and NYSE Rule 112.20 and must enter such orders only for the purpose of hedging a position in the ETF.[19]

The NYSE proposes to amend NYSE Rule 13 to remove the requirement that the specialist obtain the prior approval of a Floor Governor or two Floor Officials before electing a stop order or a stop limit order by a quotation. The specialists, however, must obtain Floor Official approval in the situation where the bid or offer that would elect a stop or stop limit order is more than 0.10 point away from the last sale and is made for the specialist's dealer account.[20] The Commission believes that the amendment to NYSE Rule 13 is consistent with the Act.

The Commission notes that, pursuant to the proposed rule change, ETFs will not be subject to the NYSE's MOC/LOC policy regarding order entry limitations, cancellation of orders during a regulatory halt, imbalance publications, and any other limitations or procedures with respect to MOC/LOC procedures. Moreover, ETFs will trade until 4:15 p.m., except on the last business day of each month.[21] ETFs will not be subject to the NYSE's policies concerning mandatory pre-opening price indications and notifications in cases of order balances because ETF prices are based on the values of the underlying component securities, notwithstanding any other imbalance. The Exchange will publish Information Memos to notify member organizations of the foregoing policies. The Commission finds that these policies, as revised, are appropriate in the context of ETFs.

Finally, the Commission, pursuant to Section 19(b)(2) of the Act,[22] finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication in the **Federal Register**. In Amendment No. 3, the NYSE withdrew the proposed amendment to NYSE Rule 111; revised the rule text of NYSE Rule 36 to clarify that if an order in a component security of an ETF is executed on the Exchange floor, the order must be in compliance with NYSE Rule 112.20 and Rule 11a2–2(T) under the Act,[23] and must be for the purpose of hedging a position in the ETF; and revised its proposed amendment to NYSE Rule 13 to require Floor Official approval in a situation where the bid or offer that would elect a stop or stop limit order is more than 0.10 point away from the last sale and is made for the specialist's dealer account. The Commission finds these changes are necessary to clarify the rules governing the ability of specialists to execute trades for their own account on the Exchange. Therefore, accelerated approval of Amendment No. 3 is appropriate.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the whether Amendment No. 3 to the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

[15] The Commission notes that specialists registered only in an ETF are subject to the $1,000,000 minimum capital requirement of NYSE Rule 104.20.

[16] Any proprietary options order must be executed in compliance with NYSE Rule 105, which generally restricts specialist's specialty options transactions to hedging transactions.

[17] The Commission notes that the specialist will only be able to gain public market information from other market centers. *See, e.g.,* NYSE Rule 115.

[18] 17 CFR 240.11a2–2(T).

[19] *See* Amendment No. 3, *supra* note 6. NYSE Rule 112.20 states, in relevant part, that a member using a communication facility located on the Floor of the Exchange to enter an order for his own account will be deemed to be initiating an off-Floor order if such order is routed through a clearing firm's order room, where a time-stamped record of the order is maintained, before such order re-transmitted to the Floor for execution. However, an off-Floor order for an account in which a member has an interest is to be treated as an on-Floor order if it is executed by the number who initiated it. Rule 11a2–2(T) under the Act relates to conditions surrounding a member's ability to trade for his own account or for the account of an associated person on the floor of the Exchange.

[20] The Commission notes that the amendment to NYSE Rule 13 parallels the specialist's responsibility to obtain floor official approval under NYSE Rule 123A.40 in situations where the specialist is a party to the electing trade.

[21] *See supra* note 12.

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 240.11a2–2(T).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2001–08 and should be submitted by August 24, 2001.

**V. Conclusion**

for the foregoing reasons, the Commission finds that the NYSE's proposal to amend its rules and policies to accommodate the trading of certain ETFs on a UTP basis, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–NYSE–2001–08), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 01–19436 Filed 8–2–01; 8:45 am]

**BILLING CODE 8010–01–M**

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12)

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–44608; File No. SR–OCC–2001–02]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Deposits of Nasdaq SmallCap Securities as Margin Collateral Pursuant to Rule 604(d)

July 27, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] notice is hereby given that on April 11, 2001, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

[1] 15 U.S.C. 78s(b)(1).

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change would amend OCC Rule 604(d) to allow Nasdaq SmallCap Market Securities to be deposited as margin collateral. The rule change also makes certain other technical changes to the rule.[2]

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The primary purpose of this rule change is to allow securities traded in the Nasdaq SmallCap market to the deposited as collateral pursuant to Rule 604(d). The rule change also makes certain other technical changes to the rule.

Nasdaq SmallCap Securities

In 1984, OCC received Commission approval to amend Rule 604(d) to allow the deposit of securities traded in the Nasdaq National Market System (''NMS'') as a form of margin collateral.[4] Nasdaq formed the NMS market in 1982 to distinguish NMS securities as those securities that met its highest listing standards and that were subject to real-time sale price and volume reporting. Securities that did not meet NMS standards were termed ''regular Nasdaq securities.'' While the eligibility criteria found in Rule 604(d) have remained relatively unchanged since 1984, the structure of the Nasdaq market has evolved substantially since then.

The Nasdaq market structure has had many notable changes. For example, in 1992, all Nasdaq securities became subject to real-time last sale price and volume reporting requirements, increasing the transparency for all Nasdaq issues (*i.e.,* NMS and regular Nasdaq securities).[5] Then, in 1994, the Nasdaq Stock Market was created with two distinct tiers: The Nasdaq National Market® (''NNM,'' formerly the NMS market) and the SmallCap market (formally the regular Nasdaq securities).[6] Later, in 1997, the qualification standards of both the NNM and the SmallCap market tiers were substantially upgraded.[7]

The upgraded qualification standards applicable to Nasdaq SmallCap issuers set forth minimum and ongoing financial criteria (*e.g.,* assets, capitalization, and income), share float and price criteria, corporate governance (*e.g.,* independent directors, audit committee formation and activities, auditor peer review, and voting rights), and public disclosure (*e.g.,* timely filing and distribution of annual and interim financial reports and annual meeting of shareholders).[8] These qualification criteria exceed the standards that governed the Nasdaq NMS securities at the time those securities were approved for margin purposes in 1984. The Nasdaq SmallCap qualification standards approximate American Stock Exchange (''Amex'') listing criteria applicable to equity securities.[9] Such Amex listed equity securities are accepted by OCC for margin purposes. OCC therefore believes that the qualification standards that are applicable to SmallCap issues provide sufficient safeguards to address concerns about the quality of securities trade in that market tier.

The ten dollar minimum price per share requirement and concentration limit (*i.e.,* the securities of any one issuer cannot exceed 10% of the margin requirement for any one clearing member account) of Rule 604(d) also provide additional safeguards to

[2] A copy of OCC's proposed rule change is available at the Commission's Public Reference Section or through OCC.

[3] The Commission has modified the text of the summaries prepared by OCC.

[4] Securities Exchange Act Release No. 20558 (January 18, 1984), 49 FR 2183 [File No. SR–OCC–83–17] (order approving an OCC rule change allowing clearing members to deposit certain common stocks not underlying options to satisfy their margin obligations).

[5] Securities Exchange Act Release No. 30569 (April 16, 1992), 57 FR 13396 [File No. SR–NASD–91–50] (order approving a rule change requiring real-time trade reporting of transactions in Nasdaq securities, except convertible debt, and allowing the NASD to publicly disseminate the information).

[6] Securities Exchange Act Release No. 34928 (November 9, 1994), 59 FR 55906 [File No. SR–NASD–94–48] (order clarifying the two tiers of the Nasdaq Stock Market as the Nasdaq SmallCap Market and the Nasdaq National Market).

[7] Securities Exchange Act Release No. 38961 (August 29, 1997), 62 FR 45895 [File No. SR–NASD–97–16] (order revising the listing and maintenance standards to increase the quality of companies listed on Nasdaq and raising the level of investor protection).

[8] NASD Rules 4310 and 4350.

[9] American Stock Exchange Company Guide, Sections 101, 102, and 120–132.

minimize issuer quality concerns. OCC has analyzed the market and liquidity risks associated with accepting SmallCap securities for margin purposes by utilizing daily returns and volume statistics for the last four years. Average daily returns and standard deviation of average daily returns for the entire population of SmallCap securities as well as a subset of the population having a price of greater than ten dollars per share were computed. For comparison, a similar computation was performed for NNM securities. A summary of this analysis is outlined below:

| Class | Average range minimum (in percent) | Average range maximum (in percent) | Average move* (in percent) | Average standard deviation (in percent) |
|---|---|---|---|---|
| NNM (All) | −24.5 | +86.2 | 3.6 | 7.5 |
| NNM (>$10) | −21,3 | +29.9 | 3.2 | 4.8 |
| SmallCap (>All) | −33.9 | +128.2 | 5.0 | 10.7 |
| SmallCap (>$10) | −21.1 | +51.4 | 2.6 | 5.3 |

*Computed on the basis of the absolute value daily returns.

Based on this analysis, OCC has concluded that the average SmallCap security presents market risks similar to that of NNM securities, especially for those securities that trade at a price greater than ten dollars per share.[10] This analysis also confirms that the current 70% valuation rate provides a sufficient cushion to protect against adverse market moves in SmallCap securities.

Finally, OCC performed a volume analysis to assess the liquidity of SmallCap securities over the same four-year period which confirmed that SmallCap securities are not as liquid as NNM securities.[11] However, the analysis also showed that a material portion of this average share volume is concentrated in a relatively small number of NNM issuers. For example, 20% of the NNM average share volume is attributable to the shares of five issuers. However, there are over 2,150 additional NNM securities that may be deposited for margin purposes. In light of the concentration within the NNM, OCC believes that there is sufficient liquidity in SmallCap issues over ten dollars to support their acceptance for margin purposes.

Conforming Changes

Certain changes are also being proposed for Rule 604(d) to conform its terms to similar changes elsewhere in OCC's By-Laws and Rules that were previously approved by the Commission. Rule 604(d) currently provides that no security that has been suspended from trading or is subject to special margin requirements by its ''primary market'' may be deposited as margin. The rule also defines the current market value of a stock or bond to be its closing price on the ''primary market'' for such stock or bond.

OCC is proposing to delete the term ''primary market'' from certain OCC rules.[12] Removing the term ''primary market'' was prompted by recognition that the equity markets were becoming increasingly fragmented. OCC desired the discretion to designate the market whose closing price would serve as the benchmark in order to avoid disputes over which market is a stock's primary market. OCC believes that it is appropriate to make this same change for Rule 604(d) purposes. For purposes of determining whether a security has been suspended from trading or subject to special margin requirements, OCC would use its discretion as to which of the markets that listed or otherwise qualified the security for trading would be followed.

Another conforming change concerns the time when a ''closing price'' is determined. To address any questions that may arise with the growth of after-hours trading, OCC is proposing to amend Rule 604(d) to provide that the closing price will be determined at the close of ''regular trading hours (as defined by the Corporation) * * *.'' This change allows OCC to avoid potential disputes by (i) eliminating any basis for arguing that the closing price should be determined based on after-hours trading and (ii) giving OCC the discretion to determine when ''regular trading hours'' end.

Finally, OCC is proposing to eliminate those provisions of Rule 604(d) that require stocks that are deposited as margin to be subject to last sales reporting. It is OCC's understanding that all exchange traded Nasdaq Stock Market securities are now subject to last sales reporting, making the requirement unnecessary.

The proposed rule change is consistent with Section 17A of the Act because it enables clearing members to use additional securities as margin collateral without adversely affecting the safekeeping of securities that are in OCC's possession, custody, or control.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

OCC does not believe that the proposed rule change would impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[10] Approximately 12% of SmallCap securities trade at over ten dollars per share.

[11] Average daily share volume of NNM securities trading over ten dollars per share was 594,632 while the average daily share volume of SmallCap securities trading above ten dollars was 15,005 shares.

[12] Securities Exchange Act Release Nos. 43782 (January 9, 2001), 66 FR 1712 [File No. SR–OCC–00–04] (notice of proposed rule change revising OCC's price determination rules); and 41089 (March 1, 1999), 64 FR 10051 [File No. SR–OCC–98–14] (order approving the revision of OCC Rule 805 with respect to closing prices in expiration processing).

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–2001–02 and should be submitted by August 24, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–19384 Filed 8–2–01; 8:45 am]

**BILLING CODE 8010–01–M**

---

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–44610; File No. SR–OCC–2001–07]**

## Self-Regulatory Organizations; Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Clearing Security Futures

July 27, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 29, 2001, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statements of the Terms of Substance of the Proposed Rule Change

OCC is proposing rule changes to permit OCC to clear and settle security futures.

[1] 15 U.S.C. 78s(b)(1).

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included states concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Introduction

In SR–OCC–2001–05, OCC filed with the Commission proposed amendments to its By-Laws specifying the types of markets for which OCC would clear security futures and describing the general terms on which it would clear for those markets. That rule change was approved by order of the Commission dated June 15, 2001.[3] The purpose of this rule filing is to submit a full set of rule changes that will permit OCC to clear and settle transactions in security futures.

These rules are intended to be as generic as possible to cover any security futures product that may be developed by the markets clearing through OCC. Nevertheless, it may be necessary in the future to amend or supplement these rules to accommodate specific products that are developed by the markets.

2. Overview of Security Futures Rules

Amendments to the By-Laws and Rules are in the same general format that has previously been used for new products. The proposed rules would provide for clearance and settlement of nearly the full range of security futures products that can be traded under the Commodity Futures Modernization Act. These include physically-settled futures on individual stocks as well as cash-settled futures on individual stocks and narrow-based stock indices. A further rule change would be required in order for OCC to clear options on security futures.

The security futures provided for in this rule filing will have the same basic terms as futures contracts trading in the traditional futures markets under the jurisdiction of the Commodity Futures Trading Commission (''CFTC''). A futures contract is entered into at a contract price'' agreed upon between the buyer and seller in the futures market. The contract price represents the notional price or value at which the underlying stock or index will be purchased and sold at ''maturity'' of the contract if the contract has not been offset through an earlier closing transaction. The contracts will be marked to the daily closing price of the futures contract through ''variation payments'' that are passed through OCC from the buyer to the seller or vice versa depending upon the direction of the market movement. Intraday variation settlements are also provided for although it is OCC's present intention to effect intraday variation settlements only on an exception basis when market conditions or other factors make such settlements necessary or desirable. A deposit of ''original'' or ''risk'' margin will be required from both purchasers and sellers to cover the maximum anticipated variation payment that would likely be required (within usual confidence intervals) based on the clearing member's positions. This calculation will be made based upon all of the positions in the particular account of the clearing member using OCC's TIMS system for portfolio margining.

A maturity of the contract, a ''final variation payment'' will be determined based on a ''final settlement price.'' The final settlement price will be the price or level of the underlying security at a specified point or interval in time, which could be either the closing price or a volume-weighted average price on the last day of trading of the futures contract or an opening price on the following day. In the case of cash-settled futures, all rights and obligations under the contract would be satisfied by the final variation payment. In the case of physically-settled security futures, delivery of and payment for the underlying stock would be effected pursuant to the same basic rules currently applicable to settlement of stock option exercises. The price to be paid by the purchaser is referred to as the ''aggregate purchase price'' and is equal to the final settlement price times the number of shares to be delivered. Effectively, delivery occurs at the current market price of the stock, but the net of the variation payments paid and received over the period that the futures contract was held puts the buyer and seller in the economic position of having purchased and sold the security at the original contract price.

Because a security future is both a ''security'' as defined in the Act and a

[2] The Commission has modified parts of these statements.

[3] Securities Exchange Act Release No. 44434 (June 15, 2001), 66 FR 33283.

''contract for sale of a commodity for future delivery'' as defined in the Commodity Exchange Act (''CEA''), security futures are subject to the joint jurisdiction of the Commission and the CFTC. One result of this novel arrangement is that security futures may in certain circumstances be carried by clearing members for their customers in futures ''customer segregated funds'' accounts subject to the CEA and rules thereunder, and in other circumstances they may be carried in securities accounts subject to the Securities Investor Protection Act and Commission Rule 15c3–3 as well as other customer protection rules under the Act. When security futures are carried in segregated funds accounts at the member firm level, we have assumed that the CFTC will require that they also be carried in segregated funds accounts at the clearing level. Accordingly, OCC is proposing to add a ''customer segregated funds'' account to the types of accounts that a clearing member is able to carry at OCC.

OCC is also proposing to permit futures clearing organizations (''derivative clearing organizations'' registered as such under the CEA) to carry omnibus accounts at OCC for the purpose of clearing transactions in security futures on behalf of their clearing members that are not clearing members of OCC. A futures clearing organization could establish one such account for clearing its members' proprietary transactions and a second segregated funds account for members' customer transactions.

OCC has provided below a more detailed description of specific changes and additions to the By-Laws and Rules. Some changes, however, seemed sufficiently obvious in their purpose and effect so that no further explanation has been provided.

3. Summary of By-Law Changes

*i. Definitions.* Because the various terms needed to describe security futures are used throughout the by-Laws and Rules, OCC purposes to include all necessary new definitions in Article I of the By-Laws. Necessary terms have been adopted and defined to correspond as closely as possible to the terminology used in the existing futures markets while also being consistent with terminology in OCC's rules. Certain terms were included in SR–OCC–2001–05, referred to above. Others are added in this rule change, and various existing definitions are amended so that they apply to security futures as well as options. Most of these definitions are self-explanatory, but a few terms that are of particular significance are described below. Certain defined terms are discussed later on in connection with the substantive provisions of the rules where they are used.

The terms ''class'' and ''series'' are amended in order to apply to futures even though such terms are not widely used, if at all, in the futures industry. Such terms are consistent with securities terminology and OCC's existing rules. As in the case of options, the term ''series'' is used to define a set of security future contracts that are mutually identical and therefore fungible. The term ''series marker'' is used to describe a unique identifier that may be assigned to the particular market on which a series is traded. Because the series marker is considered a term of the security future, the effect of the marker is that contracts of a series bearing that unique series marker are not fungible with contracts traded on another exchange even if those contracts have otherwise identical terms. Whether or not a series of security futures will bear a series marker is a decision to be made by the market that trades the series.

The term ''contracts'' has been made lower-case to reflect a more generic definition. It is now used to refer to any ''cleared security,'' which includes security futures as well as broad-based index futures that are included in cross-margining arrangements. This broad usage is reflected primarily in the margin rules in Chapter VI of the Rules.

The definitions of ''nominated correspondent'' and ''nominating clearing member'' are being deleted as this particular agency relationship is no longer used. References to these terms are deleted throughout the By-Laws and Rules.

*ii. Clearing Members Qualifications.* The interpretations and Policies following Article V, Section 1 of the By-Laws are amended to adapt those requirements to clearing members that clear security futures. Because some of those clearing members may be futures commission merchants (''FCMs'') primarily regulated as such and only notice-registered as broker-dealers under Section 15(b)(11)(A) of the Act, it is necessary to provide alternative membership requirements in certain cases. For example, in the area of experience and competence, OCC has proposed to retain some flexibility in this regard by saying that such clearing members must meet ''such other non-discriminatory standards of experience and competence as the Corporation may prescribe.'' In addition, interpretation .06 under Section 1 provides that OCC may give expedited review and may waive certain non-financial criteria where appropriate in order to admit affiliates of existing clearing members for the sole purpose of clearing security futures. Some clearing members do their futures business through an affiliate, and OCC believes that it is appropriate to give special consideration to such affiliates to the extent that their affiliation with an existing clearing member provides access to competent and experienced personnel able to assist the affiliate if necessary to enable the affiliate to meet OCC's operational requirements.

*iii. Accounts for Clearing Security Futures.* OCC is amending Article VI, Section 3 of the By-Laws to provide an additional account, the segregated futures account, for the clearance of transactions of ''futures customers,'' which are defined in Article I to mean persons whose positions are carried by an FCM in a futures account required to be segregated under Section 4d of the CEA. A clearing member might carry customer positions in a futures account rather than a securities account either because it is primarily regulated as a FCM and does not carry securities accounts or because it is a dual registrant (fully registered both as an FCM and a broker-dealer) and the clearing member, or the clearing member and its customer, choose to carry security futures in a futures account.

The segregated futures account is essentially like a combined market-maker account in that the positions of different futures customers are commingled in it, and OCC's lien extends to all positions, margin, and other assets in the account. OCC can liquidate the account to a single net debit or credit in the event of a clearing member default and can therefore margin it on a net basis as it does a combined market-maker account. Unlike the regular customers' account, which is a securities account, there is no need to hold ''fully-paid and excess margin securities'' free of any liens because the customer's futures account at the clearing firm level is not subject to Commission Rule 15c3–3.

*iv. General Clearance Rules.* The provisions of Article VI of the By-Laws were originally drafted to apply to transactions in stock options. Over the years, they have been amended and replaced and supplemented by provisions in other articles to provide for the clearance of other products. OCC has followed this pattern in the present rule change.

Provisions of Article VI, Section 3 relating to the ''firm account'' have been modified to provide that it may only be used for transactions of the firm itself and persons who are not customers

either for purposes of the CEA and CFTC regulations or for purposes of the securities laws and regulations, principally Rule 15c3–3 and the hypothecation rules.[4] In addition to the foregoing changes, and largely unrelated to security futures, OCC is amending Section 3 to eliminate references to ''specialists,'' which references are rendered unnecessary be changes in the Article I definition of ''market-maker'' to include specialists. In addition, OCC is proposing to eliminate the stock specialist and registered trader accounts because OCC believes that no such accounts are currently in use. The definition of a ''market-maker'' has been expanded to include all types of proprietary trading done pursuant to rules that are intended to ensure that such trading serves a market function. This change will allow positions of stock specialists and registered traders to be carried in a market-maker account.

Sections 4 through 9 of Article VI of the By-Laws are amended to make them applicable to security futures and to eliminate certain redundancies and unnecessary material. A new paragraph (d) has been added to Section 10, which relates to the establishment of terms of cleared securities and the opening of new series, in order to provide for security futures. In addition, the provisions setting deadlines for the various markets to notify OCC of the opening of new series in any cleared security have been updated and consolidated in a new paragraph (e), which permits OCC to announce such deadlines from time to time. The advance notice that is actually currently required by OCC is generally much shorter than the deadlines specified in Section 10 as a result of improvements in efficiency that make the longer notice periods unnecessary. Sections 11 through 18 are amended to apply to security futures.

Section 19 of Article VI, which relates to shortages of underlying securities, makes parallel provisions for physically-settled security futures. It is worth noting that in the case of security futures, the economic result of the futures contract is primarily realized through the stream of variation payments and that the stock is delivered against current market value at maturity of the future. Accordingly, if a shortage of underlying securities makes delivery impossible or unduly burdensome, OCC may elect simply to terminate delivery and payment obligations and let the final variation payment completely satisfy all rights and obligations under the contract. If, for some reason, the circumstances suggest that the final settlement price should be adjusted in any way to reflect that no delivery will occur, the provisions of amended Section 19 give OCC the authority to do so.

*v. New Article XII of the By-Laws.* This article sets out some basic provisions for security futures, including both physically-settled and cash-settled security futures. The general rights and obligations of buyers and sellers of security futures, including the obligation to make and the right to receive variation payments, are set forth here.

Section 3 pertains to adjustments of the terms of outstanding security futures in response to certain events affecting the underlying securities that make adjustments necessary or appropriate in the interest of fairness to buyers and sellers. Section 3 sets out detailed adjustment rules for security futures while the detailed provisions for adjustment of narrowbased index futures are set forth in Section 4.

Adjustments to security futures will be necessary from time to time to reflect certain corporate events affecting the underlying stock. Such adjustments will be determined by OCC rather than by an ''adjustment panel'' under the provisions of existing Article VI, Section 11 of the By-Laws. However, the adjustment rules for security futures are substantially parallel to the adjustment rules for stock options, and the adjustment rules in Section 4 for narrow-based index futures are parallel to the adjustment rules for index options. OCC anticipates a policy of coordinating discretionary adjustment determinations for consistency between adjustments of security futures and option contracts on the same underlying stock to the fullest extent practicable.

Futures contracts are ordinarily like European-style options in the sense that there is no opportunity to ''exercise'' or terminate the contract prior to its expiration or maturity date (other than through closing transactions in the market). There are currently no European-style options on individual stocks, and security futures may therefore be adjusted differently than options on the same securities. For example, where a warrant or right is distributed that expires before the maturity date of a security future or expiration date of a stock option, the security future may not be adjusted to reflect that distribution whereas an American-style option on the same security ordinarily would be adjusted.

Where the adjustment rules call for adjustment in the exercise price of an option, the corresponding adjustment for futures contracts would be to make a one-time only adjustment in the last settlement price established before the adjustment is effective for use in determining the correct daily variation payment or the adjusted contracts. Cash-settled security futures ordinarily will be adjusted in accordance with the same rules as physically-settled security futures and options. Where physically-settled contracts are adjusted by adjusting the underlying to include distributed property, the appropriate adjustment to the cash-settled contract could be different if there is no public market in which the distributed property will be traded for purposes of establishing market values thereafter.

Article XII, Section 5, which anticipates situations in which a market price for an underlying stock or a current value of an underlying index might be unavailable or inaccurate, is essentially parallel to the provisions of Article XVII, Section 4, which applies to index options. The rule applies not only to narrow-based index futures, but also to cash-settled and physically-settled security futures. The reason for this is that security futures, unlike stock options, require a determination of ''final settlement price'' at maturity. Whereas settlement of an exercised stock option is effected by delivery of the stock against the exercise price of the option, settlement at maturity of a security future involves a final variation payment based on the final settlement price, which is also the price against which the underlying stock is delivered if the future is physically-settled.

Section 6 of Article XII provides that the final settlement price for any security future at maturity is determined by a method approved by the market listing the security future. It could be based on a price or level of the underlying interest at a point in time, such as a closing value or opening value for a stock or index on the maturity date or the following business day, or it could be based on an average of prices, such as the volume-weighted average price for an underlying stock on the maturity date.

4. Rules

*i. Financial Requirements for Clearing Members.* Financial requirements are substantially the same for all clearing members, whether or not they clear transactions in security futures. However, because OCC will admit clearing members that are merely notice registered as broker-dealers under Section 15(c)(11)(A) of the Act and are primarily regulated as FCMs under the CEA and the rules of the CFTC, OCC financial requirements in rule 301 that

[4] 17 CFR 240.8c–1 and 240.15c2–1.

are based on Commission financial requirements are being supplemented to provide appropriate references to corresponding CFTC requirements. It will be OCC's policy as nearly as practicable to provide substantively identical requirements for all clearing members whether their primary regulator is the Commission or the CFTC.

*ii. Trade Reporting and Matching.* Trade reporting and matching will occur for security futures in essentially the same way as for options. Rule 401 sets forth the information required to be specified in matched trade reports. As noted above, such information in the case of security futures may include, if a market so elects, a series marker that prevents contracts traded on that market from being treated as fungible (except for margin and expiration settlement purposes) with otherwise identical futures contracts traded on other markets cleared by OCC. Following the practice in the futures markets, OCC will not require that matched trade information submitted by a market identify each trade as opening or closing. OCC understands that some markets may not have systems capable of making such identifications. If a market elects to submit trade information without identification as to whether the transaction is opening or closing, OCC will treat all transactions as opening transactions. Each clearing member must then submit gross position adjustment information at the end of the day to reduce its positions to reflect the actual open interest in accounts carried by the clearing member. These procedures are consistent with current practice on many futures exchanges.

*iii. Variation Settlement.* Daily variation settlements and final variation settlements will be netted by account with other daily cash settlements and settled in accordance with OCC's usual cash settlement procedures. Chapter V of OCC's rules is being renamed ''Daily Premium and Futures Variation Settlement.'' The rules in Chapter V are being modified as necessary to include futures variation payments.

*iv. Margins.* Rules 601 and 602 are being amended to include security futures in the calculation of the ''risk margin'' required for each account of a clearing member. The term ''risk margin'' is replacing the term ''additional margin'' for options as well as security futures because OCC believes it is more descriptive. Risk margin, which is sometimes known as ''initial margin'' in the futures markets, is the margin intended to cover one day's anticipated market movement. Security futures (whether physically-settled or cash-settled) will be margined under Rule 601, which is applicable to equity options. Narrow-based index futures will be margined under Rule 602, which is applicable to index options and other non-equity options. Note that OCC's margin systems already provide for risk-based margining of index futures contracts in cross-margining accounts. Accordingly, this rule change merely extends the margin rules to cover security futures and makes other minor changes to adapt the rule to security futures. There is no substantive change in the way in which margin is calculated. Minor changes in other rules in Chapter VI are being proposed to adapt the rules for security futures.

OCC will not, at least initially, accept escrow deposits of underlying securities to collateralize positions in security futures. OCC has no present plans to include security futures in any cross-margining arrangement to allow security futures to be pledged under Rule 614.

Because each long and short position in a futures contract represents both an asset and a liability, futures contracts should never be deemed to be ''fully paid securities'' or ''excess margin securities'' within the meaning of Commission Rule 15c3–3. Therefore, neither long or short positions in security futures will be required to be ''segregated'' under OCC Rule 611.[5]

*v. Delivery of and Payment for Underlying Stock.* The provisions of Chapter IX of the rules relating to delivery and settlement in connection with exercises of stock options are being made applicable to physically-settled security futures without substantive change. As in the case of stock option exercises, delivery, and settlement with respect to security futures will ordinarily take place through the National Securities Clearing Corporation (''NSCC''). The only significant difference is that in the case of security futures the stock will settle at NSCC against the final settlement price, which will be essentially the current market value of the stock as of the date when the futures contract matures. Because option exercises settle at the exercise price, which can be deep in the money, settlement of option exercises imposes risks on NSCC that have been covered in an elaborate collateral sharing arrangement known as the ''NSCC Accord.'' OCC anticipates that it will have a much simpler agreement with NSCC for stock settlements arising from security futures contracts. Delivery obligations arising from security futures will be netted, but they will not be netted with exercise settlements of option contracts because of the differences in the arrangements with NSCC under which the two types of transactions are settled.

The provisions in Chapter IX relating to stock settlements that cannot be completed through NSCC have been adapted to apply to settlements arising from security futures as well. Similarly, the same basic buy-in and sell-out rules have also been made applicable.

*vi. Clearing Fund Contributions.* Security futures will be covered by the same clearing fund that stands behind all options cleared by OCC. Contributions of individual clearing members to the fund are based on the proportion that their average daily margin requirement bears to the average daily margin requirements of all clearing members, subject to a minimum contribution of $150,000. A special provision is being added to Rule 1001, however, to provide that an affiliate of an existing clearing member that becomes a clearing member of OCC for the purpose of clearing transactions in security futures will not be subject to the $150,000 minimum clearing fund contribution as long as the existing clearing member is in compliance with OCC clearing fund requirements and the affiliate is in compliance with its calculated clearing fund requirement. OCC believes that it would be inappropriate to require an additional $150,000 payment merely because a clearing member chooses, or may be forced because of systems or for other reasons, to clear security futures through an affiliate.

*vii. Suspension of Clearing Members and Liquidation of Accounts.* The provisions of Chapter XI of OCC's rules will apply to clearing members carrying positions in security futures in essentially the same way as they apply to clearing members carrying positions in options. Security futures will be liquidated subject to the same basic rules as options. The proposed changes in the rules are intended to apply as precisely as possible the logic of the existing rules to the liquidation of security futures. This task is complicated by the fact that security futures are quite different from options in ways that have important consequences for the structure of these rules. For example, a security future is both an asset and a liability, and accordingly the ''seller'' of a security

[5] Rule 611 allows clearing members to comply with Commission Rule 15c3–3 by holding customers' fully paid long option positions free of OCC's lien. (The rule allows clearing members to ''unsegregate'' long positions that are components of customer spreads, which has the effect of pledging those positions to OCC in exchange for reduced margin.)

future, unlike the writer of an option, may be making rather than receiving a payment. Both short positions and long positions in security futures are treated as ''securities'' under these rules, and hence the proceeds from positions in security futures, whether resulting from a closing transaction or from a variation payment, are treated like premiums received on the closing sale of an option. Since, as noted above, futures in the (securities) customers' account are always ''unsegregated'' (for purposes of Rule 611), there is no need for rules relating to the disposition of ''segregated'' security futures.

OCC is also taking this opportunity to clarify in Rule 1105(d) that, where a charge is appropriately made against a market maker account, it will be made against that account and only any shortfall will be charged against the Liquidating Settlement Account. This is not a substantive change as the rules and the provisions of the market maker account agreements have always been interpreted in this way.

*viii. New Chapter XIII.* Following past practice for new products, OCC is proposing a new chapter of the rules relating to security futures. Rule 1301 sets forth the method for determining the amount of variation payments, including the final variation payment. It is anticipated that variation settlement will be affected only once each business day and that OCC would respond to unusually large intraday price moves by requiring additional risk margin. However, the proposed rules would give OCC the flexibility to effect an additional, intraday variation settlement if OCC deems such payment to be appropriate in unusual market conditions or to coordinate its actions with those of other clearing organizations.

Rule 1302 provides for delivery of stocks underlying physically-settled security futures that have reached maturity. This is accomplished primarily by cross-reference to the rules in Chapter IX. Rule 1303 provides that ''associate clearinghouses'' may clear transactions in security futures through OCC on an omnibus basis on behalf of their members that are not clearing members of OCC. Associate clearinghouses will be treated like any other clearing member for most purposes under the rules. OCC anticipates that one or more futures clearing organizations will become associate clearinghouses of OCC. The agreements under which these associate clearinghouses will operate have not yet been negotiated. There is precedent for such arrangements, however, in that OCC had such a relationship with the clearinghouse for the European Options Exchange (''EOE'') at a time when OCC-issued options were traded on EOE.[6]

The proposed rule change is consistent with the purposes and requirements of Section 17A of the Act because it fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, removes impediments to and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, protects investors and the public interest.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

OCC does not believe that the proposed rule change would impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which OCC consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–2001–07 and should be submitted by August 24, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–19434 Filed 8–2–01; 8:45 am]

BILLING CODE 8010–01–M

[6] Securities Exchange Act Release No. 24832 (August 21, 1987), 52 FR 32377. The Commission notes that the order required OCC to file with the Commission under Rule 19b–4 of the Act any new international market agreement. The Commission expects OCC to undertake the same obligation with regard to future operating agreements it makes with any associate clearinghouse.

[7] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Docket No. 34–44603; File No. SR–PCX–2001–27]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Chane by the Pacific Exchange, Inc. Withdrawing From the Joint-Exchange Options Plan

July 27, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 27, 2001, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The PCX proposes to withdraw from the Joint-Exchange Options Plan (''JEOP'')[3] upon Commission approval

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In September 1991, the Commission approved the JEOP for the selecting, listing, challenging, and arbitrating the eligibility of new standardized equity options filed by the American Stock Exchange LLC

of the proposed Options Listing Procedures Plan (''OLPP'').[4]

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements maybe examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organizaton's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In January 2001, the options exchanges, including the PCX, submitted a proposed OLPP to replace the JEOP as directed by the Order.[5]. The JEOP provided joint procedures to facilitate the orderly introduction of new equity options and established a mechanism to ensure that only eligible securities were selected for options trading. The OLPP eliminates various JEOP provisions that the Commission found objectionable, as specified in the Order. Therefore, the PCX has filed the proposed rule change to withdraw from the JEOP, effective as of the date of approval of the OLPP by the Commission. The Commission approved the OLPP on July 6, 2001.[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[7] in general and furthers the objectives of Section 6(b)(5)[8] in particular in that it is designed to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Sigificantly affect the protection of investors or the public interest; (ii) impose any significant burden on competion; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing, or such shorter time as designated by the Commission, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)[10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, in furtherance of the purposes of the Act.

The Exchange has requested that the Commission accelerate the operative date and to waive the fiveday pre-filing requirement so that the proposed rule change may take effect upon approval of the OLPP by the Commission. The Commission believes that it is consistent with the protection of investors and the public interest and therefore finds good cause to accelerate the operative date of the proposed rule change and to waive the five day pre-filing requirement. Acceleration of the operative date and waiving the pre-filing requirement will permit the Exchange to implement the OLPP without undue delay. For these reasons, the Commission finds good cause to designate that the proposal became operative immediately upon Commission approval of the OLPP.[11]

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to the File No. SR–PCX–2001–27 and should be submitted by August 24, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–19379 Filed 8–2–01; 8:45 am]

BILLING CODE 8010–01–M

---

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–44611; File No. SR–PCX–2001–19]**

## Self-Regulatory Organizations; Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Exchange Rules Under the Minor Rule Plan

July 27, 2001.

## I. Introduction

On April 4, 2001, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''),

(''Amex''), Chicago Board Options Exchange, Inc. (''CBOE)'', New York Stock Exchange, Inc., PCX, and Philadel;hia Stock Exchange, Inc. (''Phlx''). *See* Securities Exchange Act Release no. 29698 (September 17, 1991), 56 FR 48594 (September 25, 1991).

[4] The Commission directed the PCX, Amex, CBOE, and Phlx to amend the JEOP to eliminate advance notice to other markets of theintention to list a new or existing option; to eliminate any provisions of the JEOP that prevent a market from commencing to list or trade any option listed on another market or an option that another market has expressed an intent to list; and to eliminate any provisions of the JEOP that allow one market to delay the commencement of trading of an option b anothermarket. *See* Section IV.B.a of the Order Institutig Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000) (''Order'').

[5] *See*Exchange Act Release No. 44287 (May 10, 2001), 66 FR 27184 (May 16, 2001).

[6] *See* Securities Exchange Act Release No. 4521 (July 6, 2001, 66 FR 36809 (July 13, 2001).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19–4(f)(6).

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact of efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase fines imposed on ETP Holders, ETP Firms or associated persons of an ETP Firm of its wholly-owned subsidiary, PCX Equities, Inc. (''PCXE'' or ''Corporation'') for violating the Exchange rules under the Minor Rule Plan. The proposed rule change was published for comment in the **Federal Register** on June 18, 2001.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

**II. Description of the Proposal**

The Exchange proposes to amend PCXE's rules governing Minor Rule Plan violations to increase most fines because the Exchange believes that the current fines are too low to deter violations of PCXE rules. The Exchange further believes that an increase in the current fines will more adequately sanction violations of the PCXE's order-handling and investigating rules. Many of these violations are processed under the Minor Rule Plan.

Under the proposed increases, the fines for disruptive conduct will be $500 for a first violation, $2,000 for a second and $3,500[4] for a third calculated on a two-year basis. More serious violations such as a member's failure to cooperate with a PCX examination of its financial responsibility or operational condition, will be fined $2,000 for a first violation, $4,000 for a second violation, and $5,000 for a third violation. A member that impedes or fails to cooperate in an Exchange investigation will be fined $3,500 for a first violation, $4,000 for a second and $5,000 for a third. Less serious violations such as fines for improper dress under the PCXE dress code remain the same at $100 for the first violation, $250 for the second and $500 for the third.

Under the proposed rule, the Exchange's Enforcement Department would continue to exercise its discretion under PCXE Rule 10.12(j) and take cases out of the Minor Rule Plan to pursue them as formal disciplinary matters if the facts or circumstances warrant such action. The Exchange's proposal also includes amendments to PCXE's Equity Floor Procedure Advices (''EFPA'') that correspond to the increased Minor Rule Plan fines.

**III. Discussion**

The Commission has reviewed carefully the PCX's proposed rule change and finds, for the reasons set forth below, that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] and with the requirements of Section 6(b).[6] In particular, the Commission finds the proposal is consistent with Section 6(b)(5)[7] of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission finds the proposal is also consistent with Section 6(b)(6)[8] of the Act, which requires that the rules of an exchange provide that its members and associated persons be appropriately disciplined for violations of the Act and the rules of the Exchange.

The Commission believes that the proposed rule change should assist the Exchange in exercising its responsibilities as a self-regulatory organization to properly conduct surveillance and to diligently monitor its members for compliance with the securities laws. The Commission also believes that increasing the fines for Minor Rule Plan violations will serve as a deterrent, and hopefully will result in fewer violations. The Commission notes, however, that the Exchange must continue to exercise its discretion under PCX Rule 10.13(f) and pursue violations of the rules included in the Minor Rule Plan as formal disciplinary matters if the facts and circumstances of the violation warrant such action.

**IV. Conclusion**

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–PCX–2001–19) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–19433 Filed 8–2–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44402 (June 8, 2001), 66 FR 32856.

[4] The Commission notes that when the PCX imposes a sanction in excess of $2,500, it must comply with Rule 19d–1 under the Act. 17 CFR 240.19d–1.

[5] In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(6).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–44599; File No.SR–Phlx–2001–50]**

## Self Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposal Rule Change Relating to the Specific Inclusion of Trade Correction Data and Exemptive Relief Information in the Specialist Evaluations Conducted by the Options Allocation, Evaluation and Securities Committee

July 26, 2001.

On May 1, 2001, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to include trade correction data and exemptive relief information in the specialist evaluations conducted by the Options Allocation, Evaluation and Securities Committee.

The proposed rule change was published for comment in the **Federal Register** on June 25, 2001.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of Section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act[6] because it is designed to perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission believes that exemptive relief and trade correction information

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44436 (June 15, 2001), 66 FR 33734.

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

is relevant in evaluating a specialist unit's performance and will assist the exchange in maintaining its market.

*It is Therefore Ordered,* pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–Phlx–2001–50) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–19378 Filed 8–2–01; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78(s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–44601; File No. SR–Phlx–2001–64]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Withdrawing From the Joint-Exchange Options Plan

July 27, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 22, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interest persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to withdraw from the Joint-Exchange Options PLan (''JEOP'')[3] upon the effectiveness of the proposed Options Listing Procedures Plan (''OLPP'').[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.196–5.

[3] In September 1991, the Commission approved the JEOP for the selecting, listing, challenging, and arbitrating the eligibility of new standardized equity options filed by the American Stock Exchange LLC (''Amex''), Chicago Board Options Exchange, Inc. (''CBOE''), New York Stock Exchange, Inc., Pacific Exchange, Inc. (''PCX''), and Phlx. *See* Securities Exchange Act Release No. 29698 (September 17, 1991), 56 FR 48593/4 (September 25, 1991.)

[4] The Commission directed the Phlx, Amex, CBOE, and PCX to amend the JEOP to eliminate advance notice to other markets of the intention to list a new or existing option; to eliminate any provisions of the JEOP that prevent a market from commencing to list or take any option listed on another market or an option that another market has expressed an intent to list; and to eliminate any provisions of the JEOP that allow one market to delay the commencement of trading of an option by another market. *See* Section IV.B.a of the Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000) (''Order''). Pursuant to the Order, Amex, CBOE, PCX, and Phlx, along with the International Securities Exchange LLC and the The Options Clearing Corporation, proposed the OLPP, to replace the current JEOP. *See* Securities Exchange Act Release No. 44287 (May 10, 2001), 66 FR 27184 (May 16, 2001).

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to effect the Exchange's withdrawal from the current JEOP. The Exchange proposes to make the withdrawal operative upon the approval of the OLPP by the Commission. The Commission approved the OLPP on July 6, 2001.[5]

The Exchange believes that the OLPP satisfies the Commission's mandates concerning procedures for the certification and listing of options. Therefore, the parties no longer need to rely on the JEOP for such procedures, but rather will follow the new procedures set forth in the OLPP.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general and furthers the objectives of Section 6(b)(5)[7] in particular in that it is designed to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and protect investors and the public interest by withdrawing the Exchange from the JEOP upon the implementation of the OLPP.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing, or such shorter time as designated by the Commission, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)[9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission acclerate the operative date and to waive the five day pre-filing requirement so that the proposed rule change may take effect upon approval of the OLPP by the Commission. The Commission believes that it is consistent with the protection of investors and the public interest and therefore finds good cause to accelerate the operative date of the proposed rule change and to waive the five day pre-filing requirement. Acceleration of the operative date and waiving the pre-filing requirement will permit the Exchange to implement the OLPP without undue delay. For these reasons, the Commission finds good cause to designate that the proposal became

[5] *See* Securities Exchange Act Release No. 44521 (July 6, 2001), 66 FR 36809 (July 13, 2001).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19–4(f)(6).

operative immediately upon Commission approval of the OLPP.[10]

## IV. Solicitation of Comments

Interested person are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to the File No. SR–Phlx–2001–64 and should be submitted by August 24, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–19382 Filed 8–2–01; 8:45 am]

BILLING CODE 8010–01–M

[10] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

# DEPARTMENT OF STATE

**[Public Notice: 3737]**

## Notice of Information Collection Under Emergency Review: Department of State Form DS–3057, Medical Clearance Update (no OMB Control Number)

**ACTION:** Notice.

**SUMMARY:** The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

*Type of Request:* Emergency Review.

*Originating Office:* Office of Medical Services M/DGHR/MED.

*Title of Information Collection:* Medical Clearance Update.

*Frequency:* Biennially.

*Form Number:* DS–3057.

*Respondents:* Candidates for Foreign Service Assignments Abroad and their Eligible Family Members.

*Estimated Number of Respondents:* 12,000.

*Average Hours Per Response:* 0.25 (15 minutes).

*Total Estimated Burden:* 3,000 hours.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by August 15. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until 60 days from the date that this notice is published in the **Federal Register**. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

**FOR FURTHER INFORMATION CONTACT:** Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Carol Dorsey, Office of Medical Services, 2401 E Street, NW., Room 201, U.S. Department of State, Washington, DC 20520–0102, who may be reached on to 202–663–1668.

Dated: July 2, 2001.

**Gary R. Alexander,**

*Executive Director, Office of Medical Services, U.S. Department of State.*

[FR Doc. 01–19488 Filed 8–2–01; 8:45 am]

BILLING CODE 4710–36–P

# DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## Cancellation of Preparation of Environmental Impact Statement for Lihue Airport, Lihue, Kauai, HI

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

**ACTION:** Notice of cancellation of preparation of environmental impact statement.

**SUMMARY:** The Federal Aviation Administration (FAA) announces that it has decided to discontinue preparation of an Environmental Impact Statement (EIS) for a proposed runway extension project at Lihue Airport, Lihue, Kauai, Hawaii. The FAA's decision to discontinue preparation of the EIS is based upon the decision by the Governor of the State of Hawaii to cancel the proposed runway extension project at Lihue Airport.

**FOR FURTHER INFORMATION CONTACT:** David J. Welhouse, Project Engineer, HNL–621, Federal Aviation Administration, Honolulu Airports District Office, Box 50244, Honolulu, Hawaii, 96850–0001, Telephone: 808/541–1243.

**SUPPLEMENTARY INFORMATION:** On October 28, 1998, the Federal Aviation Administration (FAA) issued a Notice of Intent to prepare an Environmental Impact Statement for future development at Lihue Airport, Lihue, Kauai, Hawaii in the **Federal Register**. The need to prepare an Environmental Impact Statement (EIS) was based on the procedures described in FAA Order 5050.4A, Airport Environmental Handbook. The need to prepare a federal EIS was primarily based on the state of Hawaii's proposed extension to Runway 17/35. The State of Hawaii, Department of Transportation—Airports Division's (HDOT), as the owner and operator of Lihue Airport has notified the FAA of the state's decision to discontinue pursuit of the proposed extension to Runway 17/35. The FAA has determined that the other various proposed projects identified in the FAA's October 28, 1998, Notice of Intent for Lihue Airport, are categorically excluded pursuant to FAA Order 5050.4A, Airport Environmental Handbook are therefore, does not

require preparation of an EIS to comply with the provisions of the National Environmental Policy Act of 1969.

Issued in Hawthorne, California on Friday, July 20, 2001.

**Herman C. Bliss,**

*Manager, Airports Division, Western Pacific Region, AWP–600.*

[FR Doc. 01–19370 Filed 8–2–01; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application (01–03–C–00–GCC) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at the Gillette-Campbell County Airport, Submitted by the County of Campbell and the City of Gillette, WY

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

**ACTION:** Notice of Intent to Rule on Application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at the Gillette-Campbell County 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 September 4, 2001.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Alan E. Wiechmann; Denver Airports District Office, DEN–ADO, Federal Aviation Administration; 26805 East 68th Avenue, Suite 224, Denver, Colorado 80249.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jay Lundell, Airport Manager, at the following address: 2000 Airport Road, Suite 108, Gillette, Wyoming 82716.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the Gillette-Campbell County Airport, under section 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. Christopher J. Schaffer, (303) 342–1258, 26805 East 68th Avenue, Suite 224, Denver, Colorado 80249. 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 (01–03–C–00–GCC) to impose and use PFC revenue at the Gillette-Campbell County Airport, under the provision of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 26, 2001, the FAA determined that the application to impose and use the revenue from a PFC submitted by the County of Campbell and the City of Gillette, Wyoming, 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 27, 2001.

The following is a brief overview of the application.

*Level of the proposed PFC:* $4.50.

*Proposed charge effective date:* December 1, 2001.

*Proposed charge expiration date:* May 15, 2005.

*Total requested for impose and use approval:* $223,944.

*Brief description of proposed project:* Design project (Rehabilitate runway 16/34 shoulders, groove runway 3/21, relocate taxiway ''C'', extend taxiway ''C''), Rehabilitate runway 16/34 shoulders and construct blast pads, Groove runway 3/21, Relocate taxiway ''C'', Extend taxiway ''C'' to runway 21 threshold, Construct new electrical vault and replace standby generator, Construct combined aircraft rescue and fire fighting/snow removal equipment building.

*Class or classes of air carriers that the public agency has requested not 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 S.W., 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 Gillette-Campbell County Airport.

Issued in Renton, Washington on July 26, 2001.

**David A. Field,**

*Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.*

[FR Doc. 01–19371 Filed 8–2–01; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Valley International Airport, Harlingen, TX

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

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Valley International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before September 4, 2001.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to T. Michael Browining, A.A.E., Manager of Valley International Airport at the following address: Director of Aviation, Valley International Airport, Airport Terminal Building, Harlingen, TX 78550.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610, (817) 222–5613.

The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Valley International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law

101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 19, 2001, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 20, 2000.

The following is a brief overview of the application.

*Level of the proposed PFC:* $3.00.

*Proposed charge effective date:* January 1, 2002.

*Proposed charge expiration date:* February 1, 2006.

*Total estimated PFC revenue:* $5,032.330.

*PFC application number:* 01–02–C–00–HRL.

Brief description of proposed project(s):

**Projects To Impose and Use PFC's**

1. Construct Air Cargo Apron
2. Extend Bodenhamer Drive to FM 509
3. Install Air Cargo Ramp Lighting
4. Acquire and Install Replacement Passenger Loading Bridge
5. Overlay Bob Youker, Woodall Boulevard and Bodenhamer Drive
6. Rehabilitate Taxiway F
7. Construct Blast Pad
8. Upgrade Runway Lighting (17L/35R and 13/31)
9. Acquire Land for Runway Protection Zones
10. Construct Taxiways L and M
11. Improve Runway Safety Areas (35L and 35R)
12. Extend and Overlay Taxiway C
13. Reconstruct Air Carrier Apron
14. Convert Runway 8/26 to a Taxiway
15. Reconstruct Perimeter Road
16. Overlay General Aviation North Apron
17. Reconstruct West Cargo Apron
18. Overlay Taxiways J and K
19. Terminal Modifications
20. Reconstruct Terminal Access Roads
21. PFC Applications Administration

Proposed class or classes of air carriers to be exempted from collecting PFC's: FAR Part 135 on demand air Taxi/Commercial Operator (ATCO) reporting on FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Valley International Airport.

Issued in Fort Worth, Texas on July 19, 2001.

**Naomi L. Saunders,**

*Manager, Airports Division.*

[FR Doc. 01–19369 Filed 8–2–01; 8:45 am]

**BILLING CODE 4910–13–M**

---

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### Environmental Impact Statement on Transportation Improvements Within the Downtown-Airport Corridor in Memphis, Tennessee

**AGENCY:** Federal Transit Administration (FTA), DOT.

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

**SUMMARY:** The Federal Transit Administration (FTA) is issuing this notice to advise interested agencies and the public that, in accordance with the National Environmental Policy Act, an Environmental Impact Statement (EIS) is being prepared for the proposed transportation improvements in the Downtown-Airport Corridor and adjacent areas located in Memphis, Tennessee.

**DATES:** *Comment Due Date:* Written comments on the scope of the alternatives and impacts to be considered should be sent to the address listed below in **ADDRESSES** by September 14, 2001.

*Interagency Scoping Meeting*

Thursday, August 23, 2001, from 1:30 p.m. to 3:30 p.m. at Central Station, 545 South Main Street, Memphis, TN 38103.

*Public Scoping Meetings*

Thursday, August 23, 2001, from 6 p.m. to 8 p.m., at the New Salem Baptist Church, 2231 South Parkway East, Memphis, TN 38114.

**ADDRESSES:** Written comments on the scope of the analysis and the impacts to be considered should be sent by September 14, 2001 to: Mr. Tom Fox, Director of Planning and Capital Projects, Memphis Area Transit Authority, 1370 Levee Road, Memphis, TN 38108–1011. Phone: (901) 722–7100. Fax (901) 722–7123.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bill Wheeler, Federal Transit Administration, 61 Forsyth Street, SW, Suite 17T50, Atlanta, GA 30303. Phone: (404) 562–3500.

**SUPPLEMENTARY INFORMATION:** The Federal Transit Administration (FTA), the federal lead agency, in cooperation with the Memphis Area Transit Authority (MATA), the local lead agency, is preparing an Environmental Impact Statement (EIS) for proposed transportation improvements in the Downtown-Airport Corridor and adjacent areas.

The transportation improvements are being defined through the Alternatives Analysis. Issues and alternatives will be identified through a scoping process in accordance with the regulations implementing the National Environmental Policy Act (NEPA) of 1969, as amended. The scoping process will include the identification and evaluation of alternative design concepts, and will provide the basis for the selection of a preferred design concept for inclusion in the regional transportation plan. Subsequently, alternative alignments and designs that are consistent with the selected concept and scope will be addressed in an EIS.

**I. Scoping**

MATA and FTA invite interested individuals, organizations, and federal, state, and local agencies to participate in establishing the purpose, alternatives, schedule, and analysis approach, as well as an active public involvement program. The public is invited to comment on the alternatives to be addressed; the modes and technologies to be evaluated; the alignments and station locations to be considered; the environmental, social, and economic impacts to be analyzed; and the evaluation approach to be used to select a locally preferred alternative. Scoping comments should focus on the issues and alternatives for analysis, and not on preference for particular alternatives. (Individual preference for particular alternatives should be communicated during the comment period for the Draft EIS that will be prepared subsequent to the Alternatives Analysis study. See FTA PROCEDURES below.) Comments may be made at the meetings or in writing no later than September 14, 2001 (see **DATES** and **ADDRESSES** above).

**II. Description of Study Area**

MATA completed a Regional Transit Plan in 1997, which included major fixed guideway investments in three corridors by 2020. The adopted plan followed MATA's opening of the downtown rail system, building upon the Main Street and Riverfront trolley lines. The final element of the downtown rail program, the Medical Center rail extension, is now in final design and construction will start in late 2001.

MATA has been investigating how best to advance the regional high capacity transit components of the 2020 plan. The most recently completed study culminated in the selection of the top priority corridor for the next phase of high capacity transit expansion. During the Corridor Selection Study, the community involvement process identified key needs of work force transportation and redevelopment of underutilized areas (transit oriented development). The three candidate corridors were evaluated on the basis of criteria such as access and mobility, costs, opportunity for transit oriented development, use of shared rights-of-way, traffic congestion, and impact on sensitive areas. In the deliberation of the results of the evaluation, the MATA Board recognized that the first phase of regional high capacity transit must be effective in attracting riders and contributing to the economic vitality of the region. The deliberations also recognized that the Airport area is the largest point of economic generation in the region and should be served by the first phase of the region system. At the conclusion of the Corridor Selection Study, the Downtown-Airport Corridor (a portion of the Southeast Corridor) was selected as the top priority to move forward for detailed study and environmental analysis.

The Downtown-Airport Corridor is located entirely within the City of Memphis. The corridor is bounded on the west by the Mississippi River, Crump Boulevard, Interstate 240 and Interstate 55; on the north by North Parkway; on the east by East Parkway, Hollywood Street, Semmes Avenue, Lamar Avenue and Getwell Road; and on the south by Raines Road. The corridor contains a diverse mix of major institutions including the Medical Center, the Fairgrounds, the Airport, and the Federal Express package handling facility. The Airport and the Federal Express hub are among the largest individual employers in the region. Medium density residential development also is evident throughout the corridor. Much of the corridor is characterized by older development, with new infill development occurring in selected areas.

The Alternatives Analysis will examine alignments, technologies, station locations, cost, funding, ridership, economic development, land use, engineering feasibility, and environmental concerns. During this Alternatives Analysis process, MATA also will evaluate the best options for connecting this initial segment with rest of the corridors.

**III. Alternatives**

The scoping meetings, other community meetings and written comments will be a major source of alternatives for consideration in the Alternatives Analysis. Transportation alternatives proposed for consideration in the Downtown-Airport Corridor will include:

1. No Action Alternative—Existing and planned transit service and programmed new transportation facilities to the year 2023 with no new change to transportation services or facilities in the area beyond already committed projects.
2. Light Rail Alternative—Extension of the downtown rail circulation system, either from the renovated Central Station or the Medical Center Extension eastward and southward to the vicinity of the Airport via several alternative alignments, including Madison Avenue, Lamar Avenue, I–240; railroad rights-of-way and others.
3. Other Technology Alternatives such as monorail and bus rapid transit.

Based on public and agency input received during scoping, variations of the above alternatives and other transportation-related improvement options, both transit and non-transit, will be considered for the Downtown-Airport Corridor.

**IV. Probable Effects/Potential Impacts for Analysis**

The FTA and MATA will consider probable effects and potentially significant impacts to social, economic and environmental factors associated with the alternatives under evaluation in the EIS. Potential environmental issues to be addressed will include: land use, historic and archaeological resources, traffic and parking, noise and vibration, environmental justice, regulatory floodway/floodplain encroachments, coordination with transportation and economic development projects, and construction impacts. Other issues to be addressed in the EIS include: natural areas, ecosystems, rare and endangered species, water resources, air/surface water and groundwater quality, energy, potentially contaminated sites, displacements and relocations, and parklands. The potential impacts will be evaluated for both the construction period and the long-term operations period of each alternative considered. In addition, the cumulative effects of the proposed project alternatives will be identified. Measures to avoid or mitigate any significant adverse impacts will be developed.

Evaluation criteria will include consideration of the local goals and objectives established for the study, measures of effectiveness identified during scoping, and criteria established by FTA for ''New Start'' transit projects.

**V. FTA Procedures**

In accordance the regulations and guidance established by the Council on Environmental Quality (CEQ), as well as the Code of Federal Regulations, Title 23, Part 771 (23 CFR 771) of the FHWA/FTA environmental regulations and policies, the EIS will include an analysis of the social, economic and environmental impacts of each of the alternatives selected for evaluation. The EIS will also comply with the requirements of the 1990 Clean Air Act Amendments (CAAA) and with Executive Order 12898 regarding Environmental Justice. After its publication, the Draft Environmental Impact Statement (DEIS) will be available for public and agency review and comment. Public hearings will be held on the DEIS. The DEIS will also constitute the Alternative Analysis required by the New Starts regulations.

The Final EIS will consider comments received during the DEIS public review and will identify the preferred alternative. Opportunity for additional public comment will be provided throughout all phases of project development.

Issued on: July 31, 2001.

**Jerry Franklin,**

*Regional Administrator.*

[FR Doc. 01–19467 Filed 8–2–01; 8:45 am]

BILLING CODE 4910–57–P

---

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 27590 (Sub–No. 2)]**

### TTX Company, et al.—Application for Approval of the Pooling of Car Service With Respect to Flat Cars

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of request for comments.

**SUMMARY:** In this proceeding, the Interstate Commerce Commission (ICC) provided for the monitoring of TTX Company (TTX) during the 10-year term of its pooling extension. The Board now proposes to reopen this proceeding to take comments from interested parties on whether any of TTX's activities require any action or particular oversight on the Board's part at this time.

**DATES:** The effective date of this decision is July 31, 2001. Comments are due on October 2, 2001.

**ADDRESSES:** Send comments (an original and 10 copies) referring to STB Finance Docket No. 27590 (Sub-No. 2) to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. Two copies of all filings should be sent separately to the Board's Office of Compliance and Enforcement, at the above address, Suite 780.

**FOR FURTHER INFORMATION CONTACT:** Melvin F. Clemens, Jr., (202) 565–1573. [TDD for the hearing impaired: 1–800–877–8339.]

**SUPPLEMENTARY INFORMATION:** In a 1994 decision approving a 10-year extension of TTX's pooling authority,[1] the ICC required its Office of Compliance and Enforcement (OCE) to monitor TTX's operations and to report on any problems at the end of the third and seventh years. Pursuant to the ICC Termination Act of 1995, Pub. L. 0No. 104–88, 109 Stat. 803 (1995)(ICCTA), effective January 1, 1996, the ICC was abolished; a number of its functions were eliminated; and its remaining rail and certain non-rail functions were transferred to the Surface Transportation Board (Board), newly established under ICCTA. Because the authority over TTX's pooling arrangement was transferred to the Board under ICCTA, the Board is now responsible for monitoring TTX's activities.

## Request for Comments

The Board requests comments on whether any of TTX's activities require any action or particular oversight on the Board's part at this time. Any commenter wishing to express a concern about any of TTX's activities should fully describe the activity, the concern, and the type of Board action that the commenter believes is appropriate. The comments will be reviewed by OCE, and, based on the issues raised, the Board will determine whether any further action is appropriate.

*Electronic Submissions.* In addition to submitting an original and 12 paper copies of each document filed with the Board (10 copies to the Office of the Secretary and 2 copies to OCE), parties must submit, on disks or CDs, copies of all textual materials, electronic work papers, and data bases and spreadsheets used to develop quantitative evidence. Data must be submitted on 3.5-inch IBM-compatible floppy disks or CDs. Textual materials must be in or compatible with WordPerfect 9.0. Electronic spreadsheets must be in, or compatible with, Lotus 1–2–3 Release 9, or Microsoft Excel 97. Each disk or CD should be clearly labeled with the identification acronym and number of the corresponding paper document, and a copy of such disk or CD should be provided to any other party upon request. The flexibility provided by such computer data will facilitate timely review by the Board and its staff.

## Environment

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

*It is ordered:*

1. Applicants, shippers, and other interested parties may file comments with the Board, as described above, on whether any of TTX's activities require any action or particular oversight on the Board's part at this time.
2. Comments are due on October 2, 2001.
3. This decision is being served on all parties appearing on the service list in Finance Docket No. 27590 (Sub-No. 2).
4. This decision is effective on July 31, 2001.

Decided: July 27, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 01–19452 Filed 8–2–01; 8:45 am]

**BILLING CODE 4915–00–P**

[1] This pooling authority was approved in *TTX Company, Et. Al—Application For approval of the Pooling of Car Service With Respect to Flat Cars,* Finance Docket No. 27590 (Sub-No. 2), ICC served Aug. 31, 1994.

---

# DEPARTMENT OF THE TREASURY

## Customs Service

## Proposed Collection; Comment Request; Articles Assembled Abroad With Textile Components Cut to Shape in the U.S.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Articles Assembled Abroad with Textile Components Cut to Shape in the U.S. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

**DATES:** Written comments should be received on or before October 2, 2001.

**ADDRESSES:** Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2C, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, Room 3.2C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

**SUPPLEMENTARY INFORMATION:** Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

*Title:* Articles Assembled Abroad with Textile Components Cut to Shape in the U.S.

*OMB Number:* 1515–0207.

*Form Number:* N/A.

*Abstract:* This collection of information enables Customs to ascertain whether the conditions and requirements relating to 9802.00.80, HTSUS, have been met.

*Current Actions:* There are no changes to the information collection. This submission is being submitted to extend the expiration date.

*Type of Review:* Extension (without change).

*Affected Public:* Businesses, Individuals, Institutions.

*Estimated Number of Respondents:* 500.

*Estimated Time Per Respondent:* 20 minutes.

*Estimated Total Annual Burden Hours:* 750.

*Estimated Total Annualized Cost on the Public:* N/A.

Dated: July 30, 2001.

**Tracey Denning,**

*Information Services Group.*

[FR Doc. 01–19478 Filed 8–2–01; 8:45 am]

BILLING CODE 4820–02–P

## DEPARTMENT OF THE TREASURY

### United States Customs Service

### Proposed Collection; Comment Request; U.S./Israel Free Trade Agreement

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the U.S./Israel Free Trade Agreement. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

**DATES:** Written comments should be received on or before October 2, 2001, to be assured of consideration.

**ADDRESSES:** Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2C, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, Room 3.2C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

**SUPPLEMENTARY INFORMATION:** Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

*Title:* U.S./Israel Free Trade Agreement.

*OMB Number:* 1515–0192.

*Form Number:* N/A.

*Abstract:* This collection is used to ensure conformance with the provisions of the U.S./Israel Free Trade Agreement for duty free entry status.

*Current Actions:* There are no changes to the information collection. This submission is being submitted to extend the expiration date.

*Type of Review:* Extension (without change).

*Affected Public:* Businesses, Individuals, Institutions.

*Estimated Number of Respondents:* 34,500.

*Estimated Time Per Respondent:* 10 minutes.

*Estimated Total Annual Burden Hours:* 7,505.

*Estimated Total Annualized Cost on the Public:* N/A.

Dated: July 30, 2001.

**Tracey Denning,**

*Information Services Group.*

[FR Doc. 01–19479 Filed 8–2–01; 8:45 am]

BILLING CODE 4820–02–P

## DEPARTMENT OF THE TREASURY

### Customs Service

### Proposed Collection; Comment Request; Declaration by the Person Who Performed the Processing of Goods Abroad

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Declaration by the Person Who Performed the Processing of Goods Abroad. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

**DATES:** Written comments should be received on or before October 2, 2001 to be assured of consideration.

**ADDRESSES:** Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2C, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, Room 3.2C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

**SUPPLEMENTARY INFORMATION:** Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

*Title:* Declaration by the Person Who Performed the Processing of Goods Abroad.

*OMB Number:* 1515–0110.

*Form Number:* N/A.

*Abstract:* This declaration, prepared by the foreign processor, submitted by the filer with each entry, provides details on the processing performed abroad and is necessary to assist Customs in determining whether the declared value of the processing is accurate.

*Current Actions:* There are no changes to the information collection. This submission is being submitted to extend the expiration date.

*Type of Review:* Extension (without change).

*Affected Public:* Businesses, Individuals, Institutions.

*Estimated Number of Respondents:* 7,500.

*Estimated Time Per Respondent:* 15 minutes.

*Estimated Total Annual Burden Hours:* 1,880.

*Estimated Total Annualized Cost on the Public:* N/A.

Dated: July 30, 2001.

**Tracey Denning,**

*Information Services Group.*

[FR Doc. 01–19480 Filed 8–2–01; 8:45 am]

BILLING CODE 4820–02–P

## DEPARTMENT OF THE TREASURY

### United States Customs Service

### Proposed Collection; Comment Request; Declaration of Ultimate Consignee That Articles Were Exported for Temporary Scientific or Educational Purposes

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Declaration of Ultimate Consignee That Articles Were Exported for Temporary Scientific or Educational Purposes. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

**DATES:** Written comments should be received on or before October 2, 2001, to be assured of consideration.

**ADDRESSES:** Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2C, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, Room 3.2C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

**SUPPLEMENTARY INFORMATION:** Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

*Title:* Declaration of Ultimate Consignee That Articles Were Exported for Temporary Scientific or Educational Purposes.

*OMB Number:* 1515–0104.

*Form Number:* N/A.

*Abstract:* The ''Declaration of Ultimate Consignee that Articles were Exported for Temporary Scientific or Educational Purposes'' is used to provide duty free entry under conditions when articles are temporarily exported solely for scientific or educational purposes.

*Current Actions:* There are no changes to the information collection. This submission is being submitted to extend the expiration date.

*Type of Review:* Extension (without change).

*Affected Public:* Businesses, Individuals, Institutions.

*Estimated Number of Respondents:* 55.

*Estimated Time Per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours:* 27.

*Estimated Total Annualized Cost on the Public:* N/A.

Dated: July 30, 2001.

**Tracey Denning,**

*Information Services Group.*

[FR Doc. 01–19481 Filed 8–2–01; 8:45 am]

BILLING CODE 4820–02–P

## DEPARTMENT OF THE TREASURY

### Customs Service

### Proposed Collection; Comment Request; Importation Bond Structure

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Importation Bond Structure. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

**DATES:** Written comments should be received on or before October 2, 2001.

**ADDRESSES:** Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2C, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, Room 3.2C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

**SUPPLEMENTARY INFORMATION:** Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

*Title:* Importation Bond Structure.

*OMB Number:* 1515–0144.

*Form Number:* N/A.

*Abstract:* The bond is used to assure that duties, taxes, charges, penalties, and reimbursable expenses owed to the Government are paid; to facilitate the movement of merchandise through Customs; and to provide legal recourse for the Government for noncompliance with Customs laws and regulations and the laws and regulations of other

agencies which are enforced by Customs.

*Current Actions:* There are no changes to the information collection. This submission is being submitted to extend the expiration date.

*Type of Review:* Extension (without change).

*Affected Public:* Businesses, Individuals, Institutions.

*Estimated Number of Respondents:* 590,250.

*Estimated Time Per Respondent:* 15 minutes.

*Estimated Total Annual Burden Hours:* 147,563.

*Estimated Total Annualized Cost on the Public:* N/A.

Dated: July 30, 2001.

**Tracey Denning,**

*Information Services Group.*

[FR Doc. 01–19482 Filed 8–2–01; 8:45 am]

BILLING CODE 4820–02–P

## DEPARTMENT OF THE TREASURY

### Customs Service

### Proposed Collection; Comment Request; Cost Submissions

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Cost Submissions. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

**DATES:** Written comments should be received on or before October 2, 2001, to be assured of consideration.

**ADDRESSES:** Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2C, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, Room 3.2C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

**SUPPLEMENTARY INFORMATION:** Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

*Title:* Cost Submissions.

*OMB Number:* 1515–0085.

*Form Number:* Customs Form 247.

*Abstract:* These Cost Submissions, Customs Form 247, are used by importers to furnish cost information to Customs which serves as the basis to establish the appraised value of imported merchandise.

*Current Actions:* There are no changes to the information collection. This submission is being submitted to extend the expiration date.

*Type of Review:* Extension (without change).

*Affected Public:* Businesses, Individuals, Institutions.

*Estimated Number of Respondents:* 1,000.

*Estimated Time Per Respondent:* 50 hours.

*Estimated Total Annual Burden Hours:* 50,000.

*Estimated Total Annualized Cost on the Public:* N/A.

Dated: July 30, 2001.

**Tracey Denning,**

*Information Services Group.*

[FR Doc. 01–19483 Filed 8–2–01; 8:45 am]

BILLING CODE 4820–02–P

## DEPARTMENT OF THE TREASURY

### Customs Service

### Proposed Collection; Comment Request; Importer's Premises Visit—Significant Importation Report

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Customs Form 213, Importer's Premises Visit—Significant Importation Report. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

**DATES:** Written comments should be received on or before October 2, 2001, to be assured of consideration.

**ADDRESSES:** Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2C, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, Room 3.2C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

**SUPPLEMENTARY INFORMATION:** Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

*Title:* Importer's Premises Visit—Significant Importation Report.

*OMB Number:* 1515–0081.

*Form Number:* Customs Form 213.

*Abstract:* The Customs Form 213 constitutes a summary report of an interview and findings of an Importer's Premises Visit by a Customs Officer.

This collection ensures uniformity among importers. These interviews are conducted by Customs based on its responsibilities involving the appraisement and admissibility of merchandise.

*Current Actions:* There are no changes to the information collection. This submission is being submitted to extend the expiration date.

*Type of Review:* Extension (without change).

*Affected Public:* Businesses, individuals, institutions.

*Estimated Number of Respondents:* 7,385.

*Estimated Time Per Respondent:* 2.4 hours.

*Estimated Total Annual Burden Hours:* 17,724.

*Estimated Total Annualized Cost on the Public:* N/A.

Dated: July 30, 2001.

**Tracey Denning,**

*Information Services Group.*

[FR Doc. 01–19484 Filed 8–2–01; 8:45 am]

**BILLING CODE 4820–02–P**

---

## DEPARTMENT OF THE TREASURY

## Customs Service

## Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers

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

**ACTION:** Notice of intent to distribute offset.

**SUMMARY:** Pursuant to the Continued Dumping and Subsidy Offset Act of 2000, this document is Customs notice of intention to distribute assessed antidumping or countervailing duties that were collected in Fiscal Year 2001 in connection with antidumping duty orders or findings or countervailing duty orders. The document gives further notice of the proposed instructions for affected domestic producers to file written certifications to claim a distribution (known as a continued dumping and subsidy offset), which Customs originally published in a Notice of Proposed Rulemaking in the **Federal Register** (66 FR 33920) on June 26, 2001. The document also sets forth the list of individual antidumping duty orders or findings and countervailing duty orders, together with the affected domestic producers associated with each order or finding who are potentially eligible to receive a continued dumping and subsidy offset.

**DATES:** Written certifications to obtain a continued dumping and subsidy offset under a particular order or finding must be received by the later of October 2, 2001, or 10 days after the effective date of the final rule document that will be published in the **Federal Register** in relation to the proposed rule that was published at 66 FR 33920 on June 26, 2001. Notice announcing this specific alternative date for the receipt of certifications will be published in the **Federal Register**.

**ADDRESSES:** Written certifications should be addressed to: Assistant Commissioner, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, D.C. 20229 (ATTN: Jeffrey J. Laxague).

**FOR FURTHER INFORMATION CONTACT:** Jeffrey J. Laxague, Office of Regulations and Rulings, (202–927–0505).

**SUPPLEMENTARY INFORMATION:**

### Background

The Continued Dumping and Subsidy Offset Act of 2000 (''ACDSOA'') was enacted on October 28, 2000, as part of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (''Act''). The provisions of the CDSOA are contained in Title X (sections 1001–1003) of the Act.

The CDSOA, in section 1003 of the Act, amended Title VII of the Tariff Act of 1930, by adding a new section 754 (codified at 19 U.S.C. 1675c) in order to provide that assessed duties received pursuant to a countervailing duty order, an antidumping duty order, or an antidumping duty finding under the Antidumping Act of 1921, must be distributed to affected domestic producers for certain qualifying expenditures that these producers incur after the issuance of such an order or finding. The term ''affected domestic producer'' means any manufacturer, producer, farmer, rancher or worker representative (including associations of such persons) that—

(A) Was a petitioner or interested party in support of a petition with respect to which an antidumping order, a finding under the Antidumping Act of 1921, or a countervailing duty order has been entered, and

(B) Remains in operation.

The distribution that these parties may receive is known as the continued dumping and subsidy offset.

Customs published a Notice of Proposed Rulemaking in the **Federal Register** (66 FR 33920) on June 26, 2001, to implement the provisions of the CDSOA. Today's **Federal Register** notice, required by 19 U.S.C. 1675c(d)(2), is being issued before a final rule is adopted to provide sufficient opportunity for affected domestic producers to gather the information that might be needed to submit claims to receive distributions.

*List of Orders or Findings and Affected Domestic Producers*

It is the responsibility of the U.S. International Trade Commission (USITC) to ascertain and timely forward to Customs a list of the affected domestic producers that are potentially eligible to receive an offset in connection with an order or finding.

To this end, it is noted that the USITC has supplied Customs with the list of individual antidumping and countervailing duty cases, and the affected domestic producers associated with each case that are potentially eligible to receive an offset. This list appears at the end of this document.

*Notice of Intent To Distribute Offset*

As required by 19 U.S.C. 1675c(d)(2), this document announces Customs intention to distribute to affected domestic producers the assessed antidumping or countervailing duties that were received in Fiscal Year 2001 in connection with the antidumping duty orders or findings or countervailing duty orders that are listed in this document.

To obtain a distribution of the offset under a given order or finding, an affected domestic producer must submit a certification to Customs, indicating that the producer desires to receive a distribution. The specific instructions for filing a certification to claim a distribution, which Customs has proposed for public comment, are explained below.

*Certifications; Submission and Content*

To obtain a distribution of the offset under a given order or finding, each affected domestic producer must timely submit a certification, in triplicate, to the Assistant Commissioner, Office of Regulations and Rulings, Headquarters, containing the required information as to the eligibility of the producer to receive the requested distribution and the total amount of the distribution that the producer is claiming.

In this latter regard, it is noted that in the proposal to implement the CDSOA that Customs published, Customs particularly requested comments as to whether the name of the certifying producer and the total amount being certified for distribution should be considered information available for disclosure to the public. Domestic producers concerned about the possible public disclosure of this information

may wish to withhold submission of their certifications until a final rule document is published and becomes effective in this matter.

It is also noted that in the proposed rulemaking to implement the CDSOA that Customs published, Customs did not prescribe specific procedures that a successor company must follow in order to file certifications on behalf of a listed company. Customs also did not prescribe specific procedures that an association must follow in order to file certifications on behalf of its member companies. Customs expects to set forth procedures for successor companies and associations in the final rule. Accordingly, successor companies and associations may wish to withhold submission of their certifications until a final rule document is published and becomes effective in this matter.

As successor companies as well as affected domestic producers who are concerned with the confidentiality of the information they submit to Customs may wish to wait for Customs decisions in the final rule before submitting certifications, Customs is providing a flexible due date for when certifications must be received.

Certifications to obtain a distribution of an offset must be received by the later of October 2, 2001, or 10 days after the effective date of the final rule document that will be published in the **Federal Register** in relation to the proposed rule that was published at 66 FR 33920 on June 26, 2001. Notice announcing this specific alternative date for the receipt of certifications will be published in the **Federal Register**. Customs anticipates that the subject final rule document will be issued in September 2001.

The certification must contain the following information:

1. The date of this **Federal Register** notice;
2. The Commerce case number;
3. The case name;
4. The name of the domestic producer;
5. Their address;
6. Their IRS number;
7. Their business type;
8. A contact person;
9. The total dollar amount claimed;
10. The dollar amount claimed by category, as described in the section entitled ''Amount Claimed for Distribution''
11. A statement of eligibility, as described in the section entitled ''Eligibility to Receive Distribution'';
12. A signature by a corporate officer.

The following provides additional information on meeting these requirements.

*Identifying Information for Domestic Producer*

The certification must include the following identifying information related to the domestic producer:

(1) The name of the domestic producer and any name qualifier, if applicable (for example, any other name under which the domestic producer does business or is also known);

(2) The address of the domestic producer (if a post office box, the secondary street address must also be included);

(3) The Internal Revenue Service (IRS) number (with suffix) of the domestic producer, employer identification number, or social security number, as applicable;

(4) The specific business organization of the domestic producer (corporation, partnership, sole proprietorship); and

(5) The name(s) of any individual(s) designated by the domestic producer as the contact person(s) concerning the certification, together with the phone number(s) and/or facsimile transmission number(s) and electronic mail (email) address(es) for the person(s).

*Amount Claimed for Distribution*

In calculating the amount of the distribution being claimed as an offset, the certification must enumerate the total amount of qualifying expenditures currently certified by the domestic producer, and the amount certified by category.

Qualifying expenditures which may be offset by a distribution of assessed antidumping and countervailing duties encompass those expenditures that are incurred after the issuance of an antidumping duty order or finding or a countervailing duty order, provided that such expenditures fall within any of the following categories: (1) Manufacturing facilities; (2) Equipment; (3) Research and development; (4) Personnel training; (5) Acquisition of technology; (6) Health care benefits for employees paid for by the employer; (7) Pension benefits for employees paid for by the employer; (8) Environmental equipment, training, or technology; (9) Acquisition of raw materials and other inputs; and (10) Working capital or other funds needed to maintain production.

*Eligibility To Receive Distribution*

As noted, the certification must contain a statement that the domestic producer desires to receive a distribution and is eligible to receive the distribution as an affected domestic producer. Further, the domestic producer must affirm that the net amount certified for distribution does not encompass any qualifying expenditures for which distribution has previously been made.

Moreover, as required by 19 U.S.C. 1675c(b)(1), the statement must include information as to whether the domestic producer remains in operation and continues to produce the product covered by the particular order or finding under which the distribution is sought. If a domestic producer is no longer in operation, or no longer produces the product covered by the order or finding, the producer would not be considered an affected domestic producer entitled to receive a distribution. In addition, as required by 19 U.S.C. 1675c(b)(5), the domestic producer must state whether it has been acquired by a company or business that is related to a company that opposed the antidumping or countervailing duty investigation that resulted in the order or finding under which the distribution is sought. If a domestic producer has been so acquired, the producer would again not be considered an affected domestic producer entitled to receive a distribution.

The certification must be executed and dated by a party legally authorized to bind the domestic producer and state that the information contained in the certification is true and accurate to the best of the certifier's knowledge and belief under penalty of law.

*Review and Correction of Certification*

A certification that is submitted in response to this notice of distribution may be reviewed before acceptance to ensure that all informational requirements are complied with and that any amounts set forth in the certification for current and prior qualifying expenditures, including the amount claimed for distribution, appear to be correct. A certification that is found to be incorrect or incomplete will be returned to the domestic producer. It is the sole responsibility of the domestic producer to ensure that the certification is correct, complete and satisfactory so as to demonstrate the entitlement of the domestic producer to the distribution requested. Failure to ensure that the certification is correct, complete and satisfactory will result in the domestic producer not receiving a distribution.

*Verification of Certification*

Customs reserves the right to determine whether certifications will be verified through audit or otherwise. Because certifications may be subject to verification, parties are required to maintain records supporting their

claims for a period of three years after the filing of the certification.

*List of Orders or Findings and Related Domestic Producers*

The list of individual antidumping duty orders or findings and countervailing duty orders, together with the affected domestic producers associated with each order or finding that are potentially eligible to receive an offset, is as follows:

| Commerce No. | Commission case No. | Case name | Petitioners/supporters |
|---|---|---|---|
| A–588–028 | AA1921–111 | Roller chain/Japan | American Chain Association. |
| A–401–040 | AA1921–114 | Stainless steel plate/Sweden. | Jessop Steel. |
| A–588–041 | AA1921–115 | Synthetic methionine/Japan. | Monsanto. |
| A–588–046 | AA1921–129 | Polychloroprene rubber/Japan. | E.I. du Pont de Nemours. |
| A–122–047 | AA1921–127 | Elemental sulphur/Canada | Duval. |
| A–588–056 | AA1921–162 | Melamine/Japan | Melamine Chemical. |
| A–475–059 | AA1921–167 | Pressure-sensitive plastic tape/Italy. | Minnesota Mining & Manufacturing |
| A–588–068 | AA1921–188 | Prestressed concrete steel wire strand/Japan. | American Spring Wire, Armco Steel, Bethlehem Steel, CF&I Steel, Florida Wire & Cable. |
| | | | No petition at the Commission; Commerce service list identifies: U.S. Beet Sugar Association, Florida Sugar Marketing and Terminal Association, American Sugar Cane League, American Sugarbeet Growers Association, Florida Sugar Cane League, Rio Grande Valley Sugar Growers Association, Michigan Sugar, Amstar Sugar. |
| C–408–046 | 104–TAA–7 | Sugar/EU | Sugar Cane Growers Cooperative of Florida, Alexander & Baldwin, Michigan Farm Bureau, H&R Brokerage, Talisman Sugar, American Farm Bureau Federation, Leach Farms, A.J. Yates, Hawaiian Agricultural Research Center, United States Beet Sugar Association, United States Cane Sugar Refiners' Association. |
| A–423–077 | AA1921–198 | Sugar/Belgium | Florida Sugar Marketing and Terminal Association. |
| A–427–078 | AA1921–199 | Sugar/France | Florida Sugar Marketing and Terminal Association. |
| A–428–082 | AA1921–200 | Sugar/Germany | Florida Sugar Marketing and Terminal Association. |
| A–122–085 | 731–TA–3 | Sugar and syrups/Canada | Amstar Sugar. |
| A–427–098 | 731–TA–25 | Anhydrous sodium metasilicate/ France. | PQ. |
| A–427–001 | 731–TA–44 | Sorbitol/France | Lonza Pfizer. |
| A–570–007 | 731–TA–149 | Barium chloride/China | Chemical Products. |
| A–570–101 | 731–TA–101 | Greige polyester cotton printcloth/China. | Alice Manufacturing, Clinton Mills, Dan River, Greenwood Mills, Hamrick Mills, M. Lowenstein, Mayfair Mills, Mount Vernon Mills. |
| C–357–004 | 701–TA–A | Carbon steel wire rod/Argentina. | Atlantic Steel, Continental Steel, Georgetown Steel, North Star Steel, Raritan River Steel. |
| A–357–007 | 731–TA–157 | Carbon steel wire rod/Argentina. | Atlantic Steel, Continental Steel, Georgetown Steel, North Star Steel, Raritan River Steel. |
| A–469–007 | 731–TA–126 | Potassium permanganate/Spain. | Carus Chemical |
| A–570–001 | 731–TA–125 | Potassium permanganate/China. | Carus Chemical |
| A–570–002 | 731–TA–130 | Chloropicrin/China | LCP Chemicals & Plastics Niklor Chemical. |
| C–533–063 | 303–TA–13 | Iron metal castings/India | Campbell Foundry, Le Baron Foundry, Municipal Castings, Neenah Foundry, Pinkerton Foundry, U.S. Foundry & Manufacturing, Vulcan Foundry. |
| A–122–503 | 731–TA–263 | Iron construction castings/Canada. | Alhambra Foundry, Allegheny Foundry, Bingham & Taylor, Campbell Foundry, Charlotte Pipe & Foundry, Deeter Foundry, East Jordan Foundry, Le Baron Foundry, Municipal Castings, Neenah Foundry, Opelika Foundry, Pinkerton Foundry, Tyler Pipe, U.S. Foundry & Manufacturing, Vulcan Foundry. |
| A–351–503 | 731–TA–262 | Iron construction castings/Brazil. | Alhambra Foundry, Allegheny Foundry, Bingham & Taylor, Campbell Foundry, Charlotte Pipe & Foundry, Deeter Foundry, East Jordan Foundry, Le Baron Foundry, Municipal Castings, Neenah Foundry, Opelika Foundry, Pinkerton Foundry, Tyler Pipe, U.S. Foundry & Manufacturing, Vulcan Foundry. |

| Commerce No. | Commission case No. | Case name | Petitioners/supporters |
|---|---|---|---|
| A–570–502 | 731–TA–265 | Iron construction casting/China. | Alhambra Foundry, Allegheny Foundry, Bingham & Taylor, Campbell Foundry, Charlotte Pipe & Foundry, Deeter Foundry, East Jordan Foundry, Le Baron Foundry, Municipal Castings, Neenah Foundry, Opelika Foundry, Pinkerton Foundry, Tyler Pipe, U.S. Foundry & Manufacturing, Vulcan Foundry. |
| C–351–504 | 701–TA–249 | Heavy iron construction castings/Brazil. | Alhambra Foundry, Allegheny Foundry, Bingham & Taylor, Campbell Foundry, Charlotte Pipe & Foundry, Deeter Foundry, East Jordan Foundry, Le Baron Foundry, Municipal Castings, Neenah Foundry, Opelika Foundry, Pinkerton Foundry, Tyler Pipe, U.S. Foundry & Manufacturing, Vulcan Foundry. |
| A–351–605 | 731–TA–326 | Frozen concentrated orange juice/Brazil. | Florida Citrus Mutual. |
| A–570–825 | 731–TA–653 | Sebacic acid/China | Union Camp. |
| C–122–404 | 701–TA–224 | Live swine/Canada | National Pork Producers Council, Wilson Foods. |
| A–357–405 | 731–TA–208 | Barbed wire and barbless wire strand/Argentina. | CF&I Steel, Davis Walker, Forbes Steel & Wire, Oklahoma Steel Wire. |
| A–570–501 | 731–TA–244 | Natural bristle paint brushes/China. | Baltimore Brush, Bestt Liebco, Elder & Jenks, EZ Paintr, H&G Industries, Joseph Lieberman & Sons, Purdy, Rubberset, Thomas Paint Applicators, Wooster Brush. |
| A–570–003 | 731–TA–103 | Cotton shop towels/China | Milliken, Texel Industries, Wikit. |
| C–535–001 | 701–TA–202 | Cotton shop towels/Pakistan. | Milliken. |
| C–333–401 | 701–TA–E | Cotton shop towels/Peru | No case at the Commission; Commerce service list identifies: Durafab, Kleen-Tex Industries, Pavis & Harcourt, Lewis Eckert Robb, Milliken. |
| A–538–802 | 731–TA–514 | Cotton shop towels/Bangladesh. | Milliken. |
| A–570–504 | 731–TA–282 | Petroleum wax candles/China. | National Candle Association. |
| A–588–045 | AA1921–124 | Steel wire rope/Japan | AMSTED Industries. |
| A–201–806 | 731–TA–547 | Carbon steel wire rope/Mexico. | Bridon American, Macwhyte, Paulsen Wire Rope, The Rochester Corporation, Williamsport, Wire-rope Works, Wire Rope Corporation of America, United Automobile, Aerospace and Agricultural Implement Workers (Local 960). |
| A–580–811 | 731–TA–546 | Carbon steel wire rope/Korea. | Bridon American, Macwhyte, Paulsen Wire Rope, The Rochester Corporation, Williamsport, Wire-rope Works, Wire Rope Corporation of America, United Automobile, Aerospace and Agricultural Implement Workers (Local 960). |
| A–351–505 | 731–TA–278 | Malleable cast iron pipe fittings/Brazil. | Stanley G. Flagg, Grinnell, Stockham Valves & Fittings, U-Brand, Ward Manufacturing. |
| A–580–507 | 731–TA–279 | Malleable cast iron pipe fittings/Korea. | Stanley G. Flagg, Grinnell, Stockham Valves & Fittings, U-Brand, Ward Manufacturing |
| A–583–507 | 731–TA–280 | Malleable cast iron pipe fittings/Taiwan. | Stanley G. Flagg, Grinnell, Stockham Valves & Fittings, U-Brand, Ward Manufacturing. |
| A–588–605 | 731–TA–347 | Malleable cast iron pipe fittings/Japan. | Stanley G. Flagg, Grinnell, Stockham Valves & Fittings, U-Brand, Ward Manufacturing. |
| A–549–601 | 731–TA–348 | Malleable cast iron pipe fittings/Thailand. | Stanley G. Flagg, Grinnell, Stockham Valves & Fittings, U-Brand, Ward Manufacturing. |
| A–570–506 | 731–TA–298 | Porcelain-on-steel cooking ware/China. | General Housewares. |
| A–201–504 | 731–TA–297 | Porcelain-on-steel cooking ware/Mexico. | General Housewares. |
| A–583–508 | 731–TA–299 | Porcelain-on-steel cooking ware/Taiwan. | General Housewares. |
| C–201–505 | 701–TA–265 | Porcelain-on-steel cooking ware/Mexico. | General Housewares. |
| A–580–601 | 731–TA–304 | Top-of-the-stove stainless steel cooking ware/Korea. | Farberware, Regal Ware, Revere Copper & Brass, WearEver/Proctor Silex. |
| C–580–602 | 701–TA–267 | Top-of-the-stove stainless steel cooking ware/Korea. | Farberware, Regal Ware, Revere Cooper & Brass, WearEver/Proctor Silex. |
| A–583–603 | 731–TA–305 | Top-of-the-stove stainless stell cooking ware/Taiwan. | Farberware, Regal Ware, Revere Cooper & Brass, WearEver/Proctor Silex. |
| C–583–604 | 701–TA–268 | Top-of-the-stove stainless steel cooking ware/Taiwan. | Farberware, Regal Ware, Revere Copper & Brass, WearEver/Proctor Silex. |

| Commerce No. | Commission case No. | Case name | Petitioners/supporters |
|---|---|---|---|
| C–351–604 | 701–TA–269 | Brass sheet and strip/ Brazil. | American Brass, Bridgeport Brass, Chase Brass & Copper, Hussey Copper, The Miller Company, Olin, Revere Copper Products, Allied Industrial Workers of America, International Association of Machinists & Aerospace Workers, Mechanics Educational Society of America (Local 56), United Steelworkers of America. |
| A–351–603 | 731–TA–311 | Brass sheet and strip/ Brazil. | American Brass, Bridgeport Brass, Chase Brass & Copper, Hussey Copper, The Miller Company, Olin, Revere Copper Products, Allied Industrial Workers of America, International Association of Machinists & Aerospace Workers, Mechanics Educational Society of America (Local 56), United Steelworkers of America. |
| A–122–601 | 731–TA–312 | Brass sheet and strip/Canada. | American Brass, Bridgeport Brass, Chase Brass & Copper, Hussey Copper, The Miller Company, Olin, Revere Copper Products, Allied Industrial Workers of America, International Association of Machinists & Aerospace Workers, Mechanics Educational Society of America (Local 56), United Steelworkers of America. |
| A–580–603 | 731–TA–315 | Brass sheet and strip/ Korea. | American Brass, Bridgeport Brass, Chase Brass & Copper, Hussey Copper, The Miller Company, Olin, Revere Copper Products, Allied Industrial Workers of America, International Association of Machinists & Aerospace Workers, Mechanics Educational Society of America (Local 56), United Steelworkers of America. |
| A–427–602 | 731–TA–313 | Brass sheet and strip/ France. | American Brass, Bridgeport Brass, Chase Brass & Copper, Hussey Copper, The Miller Company, Olin, Revere Copper Products, Allied Industrial Workers of America, International Association of Machinists & Aerospace Workers, Mechanics Educational Society of America (Local 56), United Steelworkers of America. |
| C–427–603 | 701–TA–270 | Brass sheet and strip/ France. | American Brass, Bridgeport Brass, Chase Brass & Copper, Hussey Copper, The Miller Company, Olin, Revere Copper Products, Allied Industrial Workers of America, International Association of Machinists & Aerospace Workers, Mechanics Educational Society of America (Local 56), United Steelworkers of America. |
| A–428–602 | 731–TA–317 | Brass sheet and strip/Germany. | American Brass, Bridgeport Brass, Chase Brass & Copper, Hussey Copper, The Miller Company, Olin, Revere Copper Products, Allied Industrial Workers of America, International Association of Machinists & Aerospace Workers, Mechanics Educational Society of America (Local 56), United Steelworkers of America. |
| A–475–601 | 731–TA–314 | Brass sheet and strip/Italy | American Brass, Bridgeport Brass, Chase Brass & Copper, Hussey Copper, The Miller Company, Olin, Revere Copper Products, Allied Industrial Workers of America, International Association of Machinists & Aerospace Workers, Mechanics Educational Society of America (Local 56), United Steelworkers of America. |
| A–401–601 | 731–TA–316 | Brass sheet and strip/Sweden. | American Brass, Bridgeport Brass, Chase Brass & Copper, Hussey Copper, The Miller Company, Olin, Revere Copper Products, Allied Industrial Workers of America, International Association of Machinists & Aerospace Workers, Mechanics Educational Society of America (Local 56), United Steelworkers of America. |
| A–588–704 | 731–TA–379 | Brass sheet and strip/ Japan. | American Brass, Bridgeport Brass, Chase Brass & Copper, Hussey Copper, The Miller Company, North Coast Brass & Copper, Olin, Pegg Metals, Revere Copper Products, Allied Industrial Workers of America, International Association of Machinists & Aerospace Workers, Mechanics Educational Society of America (Local 56), United Steelworkers of America. |

| Commerce No. | Commission case No. | Case name | Petitioners/supporters |
|---|---|---|---|
| A–421–701 | 731–TA–380 | Brass sheet and strip/Netherlands. | American Brass, Bridgeport Brass, Chase Brass & Copper, Hussey Copper, The Miller Company, North Coast Brass & Copper, Olin, Pegg Metals, Revere Copper Products, Allied Industrial Workers of America, International Association of Machinists & Aerospace Workers, Mechanics Educational Society of America (Local 56), United Steelworkers of America. |
| A–831–801 | 731–TA–340–A | Solid urea/Armenia | Agrico Chemical, American Cyanamid, CF Industries, First Mississippi, Mississippi Chemical, Terra International, W.R. Grace. |
| A–822–801 | 731–TA–340–B | Solid urea/Belarus | Agrico Chemical, American Cyanamid, CF Industries, First Mississippi, Mississippi Chemical, Terra International, W.R. Grace. |
| A–447–801 | 731–TA–340–C | Solid urea/Estonia | Agrico Chemical, American Cyanamid, CF Industries, First Mississippi, Mississippi Chemical, Terra International, W.R. Grace. |
| A–451–801 | 731–TA–340–D | Solid urea/Lithuania | Agrico Chemical, American Cyanamid, CF Industries, First Mississippi, Mississippi Chemical, Terra International, W.R. Grace. |
| A–485–601 | 731–TA–339 | Solid urea/Romania | Agrico Chemical, American Cyanamid, CF Industries, First Mississippi, Mississippi Chemical, Terra International, W.R. Grace. |
| A–821–801 | 731–TA–340–E | Solid urea/Russia | Agrico Chemical, American Cyanamid, CF Industries, First Mississippi, Mississippi Chemical, Terra International, W.R. Grace. |
| A–842–801 | 731–TA–340–F | Solid urea/Tajikistan | Agrico Chemical, American Cyanamid, CF Industries, First Mississippi, Mississippi Chemical, Terra International, W.R. Grace. |
| A–843–801 | 731–TA–340–G | Solid urea/Turkmenistan | Agrico Chemical, American Cyanamid, CF Industries, First Mississippi, Mississippi Chemical, Terra International, W.R. Grace. |
| A–823–801 | 731–TA–340–H | Solid urea/Ukraine | Agrico Chemical, American Cyanamid, CF Industries, First Mississippi, Mississippi Chemical, Terra International, W.R. Grace. |
| A–844–801 | 731–TA–340–I | Solid urea/Uzbekistan | Agrico Chemical, American Cyanamid, CF Industries, First Mississippi, Mississippi Chemical, Terra International, W.R. Grace. |
| C–508–605 | 701–TA–286 | Industrial phosphoric acid/Israel. | Albright & Wilson, FMC, Hydrite Chemical, Monsanto, Stauffer Chemical. |
| A–423–602 | 731–TA–365 | Industrial phosphoric acid/Belgium. | Albright & Wilson, FMC, Hydrite Chemical, Monsanto, Stauffer Chemical. |
| A–489–602 | 731–TA–364 | Aspirin/Turkey | Dow Chemical, Monsanto, Norwich-Eaton. |
| A–122–605 | 731–TA–367 | Color picture tubes/Canada | Philips Electronic Components Group, Zenith Electronics, Industrial Union Department, AFL–CIO, International Association of Machinists & Aerospace Workers, International Brotherhood of Electrical Workers, International Union of Electronic, Electrical, Technical, Salaried and Machine Workers, United Steelworkers of America. |
| A–588–609 | 731–TA–368 | Color picture tubes/Japan | Philips Electronic Components Group, Zenith Electronics, Industrial Union Department, AFL–CIO, International Association of Machinists & Aerospace Workers, International Brotherhood of Electrical Workers, International Union of Electronic, Electrical, Technical, Salaried and Machine Workers, United Steelworkers of America. |
| A–580–605 | 731–TA–369 | Color picture tubes/Korea | Philips Electronic Components Group, Zenith Electronics, Industrial Union Department, AFL–CIO, International Association of Machinists & Aerospace Workers, International Brotherhood of Electrical Workers, International Union of Electronic, Electrical, Technical, Salaried and Machine Workers, United Steelworkers of America. |
| A–559–601 | 731–TA–370 | Color picture tubes/Singapore. | Philips Electronic Components Group, Zenith Electronics, Industrial Union Department, AFL–CIO, International Association of Machinists & Aerospace Workers, International Brotherhood of Electrical Workers, International Union of Electronic, Electrical, Technical, Salaried and Machine Workers, United Steelworkers of America. |

| Commerce No. | Commission case No. | Case name | Petitioners/supporters |
|---|---|---|---|
| | | | No companies identified as petitioners at the Commission; Commerce service list identifies: Mitsubishi, Nissan Motor, Yamaha Motors, NSK, Hoover-NSK Bearing, ITOCHU International, Toyota Motor Sales, Timken, Nippon Seiko, Kawasaki Heavy Duty Industries. |
| A–588–054 | AA1921–143 | Tapered roller bearings 4 inches and under/Japan. | Komatsu America, Nachi Western, Ford Motor, Federal Mogul, Itocho, Kanematsu-Goshu USA, Nissan Motor USA, Nachi America, Motorambar, Honda, General Motors, Sumitomo, Koyo Seiko, American Honda Motor, Subaru of America, Suzuki Motor. |
| A–570–601 | 731–TA–344 | Tapered roller bearings/China. | Timken, Torrington. |
| A–437–601 | 731–TA–341 | Tapered roller bearings/Hungary. | Timken, Torrington. |
| A–485–602 | 731–TA–345 | Tapered roller bearings/Romania. | Timken, Torrington. |
| A–588–604 | 731–TA–343 | Tapered roller bearings over 4 inches/Japan. | Timken, Torrington. |
| A–427–801 | 731–TA–392–A | Ball bearings/France | MPB, Torrington. |
| A–427–801 | 731–TA–392–B | Cylindrical roller bearings/France. | MPB, Torrington. |
| A–427–801 | 731–TA–392–C | Spherical plain bearings/France. | Torrington. |
| A–428–801 | 731–TA–391–A | Ballbearings/Germany | MPB, Torrington. |
| A–428–801 | 731–TA–391–B | Cylindrical roller bearings/Germany. | MPB, Torrington. |
| A–428–801 | 731–TA–391–C | Spherical plain bearings/Germany. | Torrington. |
| A–475–801 | 731–TA–393–A | Ball bearings/Italy | MPB, Torrington. |
| A–475–801 | 731–TA–393–B | Cylindrical roller bearings/Italy. | MPB, Torrington. |
| A–588–804 | 731–TA–394–A | Ball bearings/Japan | MPB, Torrington. |
| A–588–804 | 731–TA–394–B | Cylindrical roller bearings/Japan. | MPB, Torrington. |
| A–588–804 | 731–TA–394–C | Spherical plain bearings/Japan. | Torrington. |
| A–485–801 | 731–TA–395 | Ball bearings/Romania | MPB, Torrington. |
| A–559–801 | 731–TA–396 | Ball bearings/Singapore | MPB, Torrington. |
| A–401–801 | 731–TA–397–A | Ball bearings/Sweden | MPB, Torrington. |
| A–401–801 | 731–TA–397–B | Cylindrical roller bearings/Sweden. | MPB, Torrington. |
| A–412–801 | 731–TA–399–A | Ball Bearings/United Kingdom. | MPB, Torrington. |
| A–412–801 | 731–TA–399–B | Cylindrical roller bearings/United Kingdom. | MPB, Torrington. |
| A–588–703 | 731–TA–377 | Internal combustion industrial forklift trucks/Japan. | Hyster, Ad-Hoc Group of Workers from Hyster's Berea, Kentucky and Sulligent, Alabama Facilities, Allied Industrial Workers of America, Independent Lift Truck Builders Union, International Association of Machinists & Aerospace Workers, United Shop & Service Employees. |
| A–588–706 | 731–TA–384 | Nitrile rubber/Japan | Uniroyal Chemical. |
| A–583–008 | 731–TA–132 | Small diameter carbon steel pipe and tube/Taiwan. | Allied Tube & Conduit, American Tube, Bull Moose Tube, Copperweld Tubing, J&L Steel, Kaiser Steel, Merchant Metals, Pittsburgh Tube, Southwestern Pipe, Western Tube & Conduit. |
| C–489–502 | 701–TA–253 | Welded carbon steel pipe and tube/Turkey. | Allied Tube & Conduit, American Tube, Bernard Epps, Bock Industries, Bull Moose Tube, Central Steel Tube, Century Tube, Copperweld Tubing, Cyclops, Hughes Steel & Tube, Kaiser Steel, Laclede Steel, Maruichi American, Maverick Tube, Merchant Metals, Phoenix Steel, Pittsburgh Tube, Quanex, Sharon Tube, Southwestern Pipe, UNR-Leavitt, Welded Tube, Western Tube & Conduit, Wheatland Tube. |
| A–549–502 | 731–TA–252 | Welded carbon steel pipe and tube/Thailand. | Allied Tube & Conduit, American Tube, Bernard Epps, Bock Industries, Bull Moose Tube, Central Steel Tube, Century Tube, Copperweld Tubing, Cyclops, Hughes Steel & Tube, Kaiser Steel, Laclede Steel, Maruichi American, Maverick Tube, Merchant Metals, Phoenix Steel, Pittsburgh Tube, Quanex, Sharon Tube, Southwestern Pipe, UNR-Leavitt, Welded Tube, Western Tube & Conduit, Wheatland Tube. |

| Commerce No. | Commission case No. | Case name | Petitioners/supporters |
|---|---|---|---|
| A–533–502 | 731–TA–271 | Welded carbon steel pipe and tube/India. | Allied Tube & Conduit, American Tube, Bernard Epps, Bock Industries, Bull Moose Tube, Central Steel Tube, Century Tube, Copperweld Tubing, Cyclops, Hughes Steel & Tube, Kaiser Steel, Laclede Steel, Maruichi American, Maverick Tube, Merchant Metals, Phoenix Steel, Pittsburgh Tube, Quanex, Sharon Tube, Southwestern Pipe, UNR-Leavitt, Welded Tube, Western Tube & Conduit, Wheatland Tube. |
| A–489–501 | 731–TA–273 | Welded carbon steel pipe and tube/Turkey. | Allied Tube & Conduit, American Tube, Bernard Epps, Bock Industries, Bull Moose Tube, Central Steel Tube, Century Tube, Copperweld Tubing, Cyclops, Hughes Steel & Tube, Kaiser Steel, Laclede Steel, Maruichi American, Maverick Tube, Merchant Metals, Phoenix Steel, Pittsburgh Tube, Quanex, Sharon Tube, Southwestern Pipe, UNR-Leavitt, Welded Tube, Western Tube & Conduit, Wheatland Tube. |
| A–122–506 | 731–TA–276 | Oil country tubular goods/Canada. | CF&I Steel, Copperweld Tubing, Cyclops, KPC, Lone Star Steel, LTV Steel, Maverick Tube, Quanex, U.S. Steel. |
| A–583–505 | 731–TA–277 | Oil country tubular goods/Taiwan. | CF&I Steel, Copperweld Tubing, Cyclops, KPC, Lone Star Steel, LTV Steel, Maverick Tube, Quanex, U.S. Steel. |
| A–559–502 | 731–TA–296 | Small diameter standard and rectangular pipe and tube/Singapore. | Allied Tube & Conduit, American Tube, Bull Moose Tube, Cyclops, Hannibal Industries, Laclede Steel, Pittsburgh Tube, Sharon Tube, Western Tube & Conduit, Wheatland Tube. |
| A–583–803 | 731–TA–410 | Light-walled rectangular tube/Taiwan. | Bull Moose Tube, Hannibal Industries, Harris Tube, Maruichi American, Searing Industries, Southwestern Pipe, Western Tube & Conduit. |
| ,A–357–802 | 731–TA–409 | Light-walled rectangular tube/Argentina. | Bull Moose Tube, Hannibal Industries, Harris Tube, Maruichi American, Searing Industries, Southwestern Pipe, Western Tube & Conduit. |
| A–351–809 | 731–TA–532 | Circular welded nonalloy steel pipe/Brazil. | Allied Tube & Conduit, American Tube, Bull Moose Tube, Century Tube, CSI Tubular Products, Cyclops, Laclede Steel, LTV Tubular Products, Maruichi American, Sharon Tube, Western Tube & Conduit, Wheatland Tube. |
| A–580–809 | 731–TA–533 | Circular welded nonalloy steel pipe/Korea. | Allied Tube & Conduit, American Tube, Bull Moose Tube, Century Tube, CSI Tubular Products, Cyclops, Laclede Steel, LTV Tubular Products, Maruichi American, Sharon Tube, Western Tube & Conduit, Wheatland Tube. |
| A–201–805 | 731–TA–534 | Circular welded nonalloy steel pipe/Mexico. | Allied Tube & Conduit, American Tube, Bull Moose Tube, Century Tube, CSI Tubular Products, Cyclops, Laclede Steel, LTV Tubular Products, Maruichi American, Sharon Tube, Western Tube & Conduit, Wheatland Tube. |
| A–583–814 | 731–TA–536 | Circular welded nonalloy steel pipe/Taiwan. | Allied Tube & Conduit, American Tube, Bull Moose Tube, Century Tube, CSI Tubular Products, Cyclops, Laclede Steel, LTV Tubular Products, Maruichi American, Sharon Tube, Western Tube & Conduit, Wheatland Tube. |
| A–307–805 | 731–TA–537 | Circular welded nonalloy steel pipe/Venezuela. | Allied Tube & Conduit, American Tube, Bull Moose Tube, Century Tube, CSI Tubular Products, Cyclops, Laclede Steel, LTV Tubular Products, Maruichi American, Sharon Tube, Western Tube & Conduit, Wheatland Tube. |
| A–588–707 | 731–TA–386 | Granular polytetrafluoroethylene/Japan. | E.I. du Pont de Nemours, ICI Americas. |
| A–475–703 | 731–TA–385 | Granular polytetrafluoroethylene/Italy. | E.I. du Pont de Nemours, ICI Americas. |
| A–351–602 | 731–TA–308 | Carbon steel butt-weld pipe fittings/Brazil. | Ladish, Mills Iron Works, Steel Forgings, Weldbend. |
| A–583–605 | 731–TA–310 | Carbon steel butt-weld pipe fittings/Taiwan. | Ladish, Mills Iron Works, Steel Forgings, Weldbend. |
| A–588–602 | 731–TA–309 | Carbon steel butt-weld pipe fittings/Japan. | Ladish, Mills Iron Works, Steel Forgings, Weldbend. |
| A–570–814 | 731–TA–520 | Carbon steel butt-weld pipe fittings/China. | Hackney, Ladish, Mills Iron Works, Steel Forgings, Tube Forgings of America. |
| A–549–807 | 731–TA–521 | Carbon steel butt-weld pipe fittings/Thailand. | Hackney, Ladish, Mills Iron Works, Steel Forgings,Tube Forgings of America. |
| A–484–801 | 731–TA–406 | Electrolytic manganese dioxide/Greece. | Chemetals, Kerr-McGee, Rayovac. |

| Commerce No. | Commission case No. | Case name | Petitioners/supporters |
|---|---|---|---|
| A–588–806 | 731–TA–408 | Electrolytic manganese dioxide/Japan. | Chemetals, Kerr-McGee, Rayovac. |
| A–428–802 | 731–TA–419 | Industrial belts/Germany | The Gates Rubber Company, The Goodyear Tire and Rubber Company. |
| A–475–802 | 731–TA–413 | Industrial belts/Italy | The Gates Rubber Company, The Goodyear Tire and Rubber Company. |
| A–588–807 | 731–TA–414 | Industrial belts/Japan | The Gates Rubber Company, The Goodyear Tire and Rubber Company. |
| A–559–802 | 731–TA–415 | Industrial belts/Singapore | The Gates Rubber Company, The Goodyear Tire and Rubber, Company. |
| A–427–009 | 731–TA–96 | Industrial nitrocellulose/France. | Hercules. |
| A–351–804 | 731–TA–439 | Industrial nitrocellulose/Brazil. | Hercules. |
| A–570–802 | 731–TA–441 | Industrial nitrocellulose/China. | Hercules. |
| A–428–803 | 731–TA–444 | Industrial nitrocellulose/Germany. | Hercules. |
| A–588–812 | 731–TA–440 | Industrial nitrocellulose/Japan. | Hercules. |
| A–580–805 | 731–TA–442 | Industrial nitrocellulose/Korea. | Hercules. |
| A–412–803 | 731–TA–443 | Industrial nitrocellulose/United Kingdom. | Hercules. |
| A–479–801 | 731–TA–445 | Industrial nitrocellulose/Yugoslavia. | Hercules. |
| A–122–804 | 731–TA–422 | Steel rails/Canada | Bethlehem Steel, CF&I Steel. |
| C–122–805 | 701–TA–297 | Steel rails/Canada | Bethlehem Steel, CF&I Steel. |
| A–588–811 | 731–TA–432 | Drafting machines/Japan | Vemco. |
| A–588–810 | 731–TA–429 | Mechanical transfer presses/Japan. | Allied Products, United Autoworkers of America, United Steelworkers of America. |
| A–570–803 | 731–TA–457–A | Axes and adzes/China | Woodings-Verona. |
| A–570–803 | 731–TA–457–-B | Bars and wedges/China | Woodings-Verona. |
| A–570–803 | 731–TA–457–C | Hammers and sledges/China. | Woodings-Verona. |
| A–570–803 | 731–TA–457–D | Picks and mattocks/China | Woodings-Verona. |
| A–570–805 | 731–TA–466 | Sodium thiosulfate/China | Calabrian. |
| A–428–807 | 731–TA–465 | Sodium thiosulfate/Germany. | Calabrian. |
| A–412–805 | 731–TA–468 | Sodium thiosulfate/United Kingdom. | Calabrian. |
| C–469–004 | 701–TA–178 | Stainless steel wire rod/Spain. | AL Tech Specialty Steel, Armco Steel, Carpenter Technology, Colt Industries, Cyclops, Guterl Special Steel, Joslyn Stainless Steels, Republic Steel. |
| A–533–808 | 731–TA–638 | Stainless steel wire rod/India. | AL Tech Specialty Steel, Armco Steel, Carpenter Technology, Republic Engineered Steels, Talley Metals Technology, United Steelworkers of America. |
| A–351–819 | 731–TA–636 | Stainless steel wire rod/Brazil. | AL Tech Specialty Steel, Armco Steel, Carpenter Technology, Republic Engineered Steels, Talley Metals Technology, United Steelworkers of America. |
| A–427–811 | 731–TA–637 | Stainless steel wire rod/France. | AL Tech Specialty Steel, Armco Steel, Carpenter Technology, Republic Engineered Steels, Talley Metals Technology, United Steelworkers of America. |
| A–580–810 | 731–TA–540 | Welded ASTM A–312 stainless steel pipe/Korea. | Avesta Sandvik Tube, Bristol Metals, Crucible Materials, Damascus Tubular Products, United Steelworkers of America. |
| A–583–815 | 731–TA–541 | Welded ASTM A–312 stainless steel pipe/Taiwan. | Avesta Sandvik Tube, Bristol Metals, Crucible Materials, Damascus Tubular Products, United Steelworkers of America. |
| A–403–801 | 731–TA–454 | Fresh and chilled Atlantic salmon/Norway. | The Coalition for Fair Atlantic Salmon Trade. |
| C–403–802 | 701–TA–302 | Fresh and chilled Atlantic salmon/Norway. | The Coalition for Fair Atlantic Salmon Trade. |
| A–580–807 | 731–TA–459 | Polyethylene terephthalate film/Korea. | E.I. du Pont de Nemours, Hoechst Celanese, ICI Americas. |
| A–570–804 | 731–TA–464 | Sparklers/China | B.J. Alan, Diamond Sparkler, Elkton Sparkler. |
| A–588–702 | 731–TA–376 | Stainless steel butt-weld pipe fittings/Japan. | Flowline. |
| A–580–813 | 731–TA–563 | Stainless steel butt-weld pipe fittings/Korea. | Markovitz Enterprises. |
| A–583–816 | 731–TA–564 | Stainless steel butt-weld pipe fittings/Taiwan. | Markovitz Enterprises. |

| Commerce No. | Commission case No. | Case name | Petitioners/supporters |
|---|---|---|---|
| A–201–802 | 731–TA–451 | Gray portland cement and clinker/Mexico. | Alamo Cement, Blue Circle, BoxCrow Cement, Calaveras Cement, Capitol Aggregates, Florida Crushed Stone, Gifford-Hill, Hanson Permanente Cement, Ideal Basic Industries, National Cement Company of Alabama, National Cement Company of California, Phoenix Cement, Southdown, Tarmac America, Texas Industries, Independent Workers of North America (Locals 49, 52, 89, 192, and 471), International Union of Operating Engineers (Local 12). |
| A–588–815 | 731–TA–461 | Gray portland cement and clinker/Japan. | Hanson Permanente Cement, National Cement Company of California, Southdown, Independent Workers of North, America (Locals 49, 52, 89, 192, and 471), International Union of Operating Engineers (Local 12). |
| A–307–803 | 731–TA–519 | Gray portland cement and clinker/Venezuela. | Florida Crushed Stone, Southdown, Tarmac America. |
| C–307–804 | 303–TA–21 | Gray portland cement and clinker/Venezuela. | Florida Crushed Stone, Southdown, Tarmac America. |
| A–588–817 | 731–TA–469 | Electroluminescent flat-panel displays/Japan. | The Cherry Corporation, Electro Plasma, Magnascreen, OIS Optical Imaging Systems, Photonics Technology, Planar Systems, Plasmaco. |
| A–570–808 | 731–TA–474 | Chrome-plated lug nuts/China. | Consolidated International Automotive, Key Manufacturing, McGard. |
| A–583–810 | 731–TA–475 | Chrome-plated lug nuts/Taiwan. | Consolidated International Automotive, Key Manufacturing McGard. |
| A–122–814 | 731–TA–528 | Pure magnesium/Canada | Magnesium Corporation of America. |
| C–122–815 | 701–TA–309–A | Alloy magnesium/Canada | Magnesium Corporation of America. |
| C–122–815 | 701–TA–309–B | Pure magnesium/Canada | Magnesium Corporation of America. |
| A–557–805 | 731–TA–527 | Extruded rubber thread/Malaysia. | Globe Manufacturing, North American Rubber Thread. |
| A–843–802 | 731–TA–539 | Uranium/Kazakhstan | Ferret Exploration, First Holding, Geomex Minerals, IMC Fertilizer, Malapai Resources, Pathfinder Mines, Power Resources, Rio Algom Mining, Solution Mining, Total Minerals, Umetco Minerals, Uranium Resources, Oil, Chemical and Atomic Workers. |
| A–821–802 | 731–TA–539–C | Uranium/Russia | Ferret Exploration, First Holding, Geomex Minerals, IMC Fertilizer, Malapai Resources, Pathfinder Mines, Power Resources, Rio Algom Mining, Solution Mining, Total Minerals, Umetco Minerals, Uranium Resources, Oil, Chemical and Atomic Workers |
| A–844–802 | 731–TA–539–F | Uranium/Uzbekistan | Ferret Exploration, First Holding, Geomex Minerals, IMC Fertilizer, Malapai Resources, Pathfinder Mines, Power Resources, Rio Algom Mining, Solution Mining, Total Minerals, Umetco Minerals, Uranium Resources, Oil, Chemical and Atomic Workers. |
| A–823–802 | 731–TA–539–E | Uranium/Ukraine | Ferret Exploration, First Holding, Geomex Minerals, IMC Fertilizer, Malapai Resources, Pathfinder Mines, Power Resources, Rio Algom Mining, Solution Mining, Total Minerals, Umetco Minerals, Uranium Resources, Oil, Chemical and Atomic, Workers. |
| A–583–080 | AA1921–197 | Carbon steel plate/Taiwan | No petition (self-initiated by Treasury); Commerce, service list, identifies: U.S. Steel, China Steel, Bethlehem Steel. |
| C–423–806 | 701–TA–319 | Cut-to-length carbon steel plate/Belgium. | Bethlehem Steel, California Steel Industries, Geneva Steel, Gulf States Steel, Inland Steel Industries, Lukens Steel, Nextech, Sharon Steel, Theis Precision Steel, Thompson Steel, U.S. Steel, United Steelworkers of America. |
| C–351–818 | 701–TA–320 | Cut-to-length carbon stell plate/Brazil. | Bethlehem Steel, California Steel Industries, Geneva Steel, Gulf States Steel, Inland Steel Industries, Lukens Steel, Nextech, Sharon Steel, Theis Precision Steel, Thompson Steel, U.S. Steel, United Steelworkers of America. |
| C–428–817 | 701–TA–322 | Cut-to-length carbon steel plate/Germany. | Bethlehem Steel, California Steel Industries, Geneva Steel, Gulf States Steel, Inland Steel Industries, Lukens Steel, Nextech, Sharon Steel, Theis Precision Steel, Thompson Steel, U.S. Steel, United Steelworkers of America. |

| Commerce No. | Commission case No. | Case name | Petitioners/supporters |
|---|---|---|---|
| C–201–810 | 701–TA–325 | Cut-to-length carbon steel plate/Mexico. | Bethlehem Steel, California Steel Industries, Geneva Steel, Gulf States Steel, Inland Steel Industries, Lukens Steel, Nextech, Sharon Steel, Theis Precision Steel, Thompson Steel, U.S. Steel, United Steelworkers of America. |
| C–469–804 | 701–TA–326 | Cut-to-length carbon steel plate/Spain. | Bethlehem Steel, California Steel Industries, Geneva Steel, Gulf States Steel, Inland Steel Industries, Lukens Steel, Nextech, Sharon Steel, Theis Precision Steel, Thompson Steel, U.S. Steel, United Steelworkers of America. |
| C–401–804 | 701–TA–327 | Cut-to-length carbon steel plate/Sweden. | Bethlehem Steel, California Steel Industries, Geneva Steel, Gulf States Steel, Inland Steel Industries, Lukens Steel, Nextech, Sharon Steel, Theis Precision, Steel, Thompson Steel, U.S. Steel, United Steelworkers of America. |
| C–412–815 | 701–TA–328 | Cut-to-length carbon steel plate/United Kingdom. | Bethlehem Steel, California Steel Industries, Geneva Steel, Gulf States Steel, Inland Steel Industries, Lukens Steel, Nextech, Sharon Steel, Theis Precision Steel, Thompson Steel, U.S. Steel, United Steelworkers of America. |
| A–423–805 | 731–TA–573 | Cut-to-length carbon steel plate/Belgium. | Bethlehem Steel, California Steel Industries, Geneva Steel, Gulf States Steel, Inland Steel Industries, Lukens Steel, Nextech, Sharon Steel, Theis Precision Steel, Thompson Steel, U.S. Steel, United Steelworkers of America. |
| A–351–817 | 731–TA–574 | Cut-to-length carbon steel plate/Brazil. | Bethelehem Steel, California Steel Industries, Geneva Steel, Gulf States, Steel, Inland Steel Industries, Lukens Steel, Nextech, Sharon Steel, Theis Precision Steel, Thompson Steel, U.S. Steel, United Steelworkers of America. |
| A–122–823 | 731–TA–575 | Cut-to-length carbon steel /Canada plate. | Bethlehem Steel, California Steel Industries, Geneva Steel, Gulf States Steel, Inland Steel Industries, Lukens Steel, Nextech, Sharon Steel, Theis Precision Steel, Thompson Steel, U.S. Steel, United Steelworkers of America. |
| A–405–802 | 731–TA–576 | Cut-to-length carbon steel plate/Finland. | Bethlehem Steel, California Steel Industries, Geneva Steel, Gulf States Steel, Inland Steel Industries, Lukens Steel, Nextech, Sharon Steel, Theis Precision Steel, Thompson Steel, U.S. Steel, United Steelworkers of America. |
| A–428–816 | 731–TA–578 | Cut-to-length carbon steel plate/Germany. | Bethlehem Steel, California Steel Industries, Geneva Steel, Gulf States Steel, Inland Steel Industries, Lukens Steel, Nextech, Sharon Steel, Theis Precision Steel, Thompson Steel, U.S. Steel, United Steelworkers of America. |
| A–201–809 | 731–TA–582 | Cut-to-length carbon steel plate/Mexico. | Bethlehem Steel, California Steel Industries, Geneva Steel, Gulf States Steel, Inland Steel Industries, Lukens Steel, Nextech, Sharon Steel, Theis Precision Steel, Thompson Steel, U.S. Steel, United Steelworkers of America. |
| A–455–802 | 731–TA–583 | Cut-to-length carbon steel plate/Poland. | Bethlehem Steel, California Steel Industries, Geneva Steel, Gulf States Steel, Inland Steel Industries, Lukens Steel, Nextech, Sharon Steel, Theis Precision Steel, Thompson Steel, U.S. Steel, United Steelworkers of America. |
| A–485–803 | 731–TA–584 | Cut-to-length carbon steel plate/Romania. | Bethlehem Steel, California Steel Industries, Geneva Steel, Gulf States Steel, Inland Steel Industries, Lukens Steel, Nextech, Sharon Steel, Theis Precision Steel, Thompson Steel, U.S. Steel, United Steelworkers of America. |
| A–469–803 | 731–TA–585 | Cut-to-length carbon steel plate/Spain. | Bethlehem Steel, California Steel Industries, Geneva Steel, Gulf States Steel, Inland Steel Industries, Lukens Steel, Nextech, Sharon Steel, Theis Precision Steel, Thompson Steel, U.S. Steel, United Steelworkers of America. |
| A–401–805 | 731–TA–586 | Cut-to-length carbon steel plate/Sweden. | Bethlehem Steel, California Steel Industries, Geneva Steel, Gulf States Steel, Inland Steel Industries, Lukens Steel, Nextech, Sharon Steel, Theis Precision Steel, Thompson Steel, U.S. Steel, United Steelworkers of America. |

| Commerce No. | Commission case No. | Case name | Petitioners/supporters |
|---|---|---|---|
| A–412–814 | 731–TA–587 | Cut-to-length carbon steel plate/United Kingdom. | Bethlehem Steel, California Steel Industries, Geneva Steel, Gulf States Steel, Inland Steel Industries, Lukens Steel, Nextech, Sharon Steel, Theis Precision Steel, Thompson Steel, U.S. Steel, United Steelworkers of America. |
| C–401–401 | 701–TA–231 | Cold-rolled carbon steel flat products/Sweden. | Bethlehem Steel, Chaparral, U.S. Steel. |
| C–428–817 | 701–TA–340 | Cold-rolled carbon steel flat products/Germany. | Armco Steel, Bethlehem Steel, California Steel Industries, Gulf States Steel, Inland Steel Industries, LTV Steel, National Steel, Nextech, Sharon Steel, Theis Precision Steel, Thompson Steel, U.S. Steel, WCI Steel, United Steelworkers of America. |
| C–580–818 | 701–TA–342 | Cold-rolled carbon steel flat products/Korea. | Armco Steel, Bethlehem Steel, California Steel Industries, Gulf States Steel, Inland Steel Industries, LTV Steel, National Steel, Nextech, Sharon Steel, Theis Precision Steel, Thompson Steel, U.S. Steel, WCI Steel, United Steelworkers of America. |
| A–428–814 | 731–TA–604 | Cold-rolled carbon steel flat products/Germany. | Armco Steel, Bethlehem Steel, California Steel Industries, Gulf States Steel, Inland Steel Industries, LTV Steel, National Steel, Nextech, Sharon Steel, Theis Precision Steel, Thompson Steel, U.S. Steel, WCI Steel, United Steelworkers of America. |
| A–580–815 | 731–TA–607 | Cold-rolled carbon steel flat products/Korea. | Armco Steel, Bethlehem Steel, California Steel Industries, Gulf States Steel, Inland Steel Industries, LTV Steel, National Steel, Nextech, Sharon Steel, Theis Precision Steel, Thompson Steel, U.S. Steel, WCI Steel, United Steelworkers of America. |
| A–421–804 | 731–TA–608 | Cold-rolled carbon steel flat products/Netherlands. | Armco Steel, Bethlehem Steel, California Steel Industries, Gulf States Steel, Inland Steel Industries, LTV Steel, National Steel, Nextech, Sharon Steel, Theis Precision Steel, Thompson Steel, U.S. Steel, WCI Steel, United Steelworkers of America. |
| C–427–810 | 701–TA–348 | Corrosion-resistant carbon steel flat products/ France. | Armco Steel, Bethlehem Steel, California Steel Industries, Geneva Steel, Gulf States Steel, Inland Steel Industries, LTV Steel, Lukens Steel, National Steel, Nextech, Sharon Steel, Theis Precision Steel, Thompson Steel, U.S. Steel, WCI Steel, United Steelworkers of America. |
| C–428–817 | 701–TA–349 | Corrosion-resistant carbon steel flat products/Germany. | Armco Steel, Bethlehem Steel, California Steel Industries, Geneva Steel, Gulf States Steel, Inland Steel Industries, LTV Steel, Lukens Steel, National Steel, Nextech, Sharon Steel, Theis Precision Steel, Thompson Steel, U.S. Steel, WCI Steel, United Steelworkers of America. |
| C–580–818 | 701–TA–350 | Corrosion-resistant carbon steel flat. | Armco Steel, Bethlehem Steel, products/Korea California Steel Industries, Geneva Steel, Gulf States Steel, Inland Steel Industries, LTV Steel, Lukens Steel, National Steel, Nextech, Sharon Steel, Theis Precision Steel, Thompson Steel, U.S. Steel, WCI Steel, United Steelworkers of America. |
| A–602–803 | 731–TA–612 | Corrosion-resistant carbon steel flat products/Australia. | Armco Steel, Bethlehem Steel, California Steel Industries, Geneva Steel, Gulf States Steel, Inland Steel Industries, LTV Steel, Lukens Steel, National Steel, Nextech, Sharon Steel, Theis Precision Steel, Thompson Steel, U.S. Steel, WCI Steel, United Steelworkers of America. |
| A–122–822 | 731–TA–614 | Corrosion-resistant carbon steel flat products/Canada. | Armco Steel, Bethlehem Steel, California Steel Industries, Geneva Steel, Gulf States Steel, Inland Steel Industries, LTV Steel, Lukens Steel, National Steel, Nextech, Sharon Steel, Theis Precision Steel, Thompson Steel, U.S. Steel, WCI Steel, United Steelworkers of America. |
| A–427–808 | 731–TA–615 | Corrosion-resistant carbon steel flat products/ France. | Armco Steel, Bethlehem Steel, California Steel Industries, Geneva Steel, Gulf States Steel, Inland Steel Industries, LTV Steel, Lukens Steel, National Steel, Nextech, Sharon Steel, Theis Precision Steel, Thompson Steel, U.S. Steel, WCI Steel, United Steelworkers of America. |

| Commerce No. | Commission case No. | Case name | Petitioners/supporters |
|---|---|---|---|
| A–428–815 | 731–TA–616 | Corrosion-resistant carbon steel flat products/Germany. | Armco Steel, Bethlehem Steel, California Steel Industries, Geneva Steel, Gulf States Steel, Inland Steel Industries LTV Steel, Lukens Steel, National Steel, Nextech, Sharon Steel, Theis Precision Steel, Thompson Steel, U.S. Steel, WCI Steel, United Steelworkers of America. |
| A–588–826 | 731–TA–617 | Corrosion-resistant carbon steel flat products/Japan. | Bethlehem Steel, California Steel Industries, Geneva Steel, Gulf States Steel, Lukens Steel, Nextech, Sharon Steel, Theis Precision Steel, Thompson Steel, U.S. Steel, WCI Steel, United Steelworkers of America. |
| A–580–816 | 731–TA–618 | Corrosion-resistant carbon steel flat products/Korea. | Armco Steel, Bethlehem Steel, California Steel Industries, Geneva Steel, Gulf States Steel, Inland Steel Industries, LTV Steel, Lukens Steel, National Steel, Nextech, Sharon Steel, Theis Precision Steel, Thompson Steel, U.S. Steel, WCI Steel, United Steelworkers of America. |
| A–570–815 | 731–TA–538 | Sulfanilic acid/China | R–M Industries. |
| A–533–806 | 731–TA–561 | Sulfanilic acid/India | R–M Industries. |
| C–533–807 | 701–TA–318 | Sulfanilic acid/India | R–M Industries. |
| A–570–806 | 731–TA–472 | Silicon metal/China | American Alloys, Elkem Metals, Globe Metallurgical, Silicon Metaltech, SiMETCO, SKW Alloys, International Union of Electronics, Electrical, Machine and Furniture Workers (Local 693), Oil, Chemical and Atomic Workers (Local 389), Textile Processors, Service Trades, Health Care Professional and Technical Employees (Local 60), United Steelworkers of America (Locals 5171, 8538, and 12646). |
| A–351–806 | 731–TA–471 | Silicon metal/Brazil | American Alloys, Globe Metallurgical, Silicon Metaltech, SiMETCO, International Union of Electronics, Electrical, Machine and Furniture Workers (Local 693), Oil, Chemical and Atomic Workers (Local 389), Textile Processors, Service Trades, Health Care Professional and Technical Employees (Local 60), United Steelworkers of America (Locals 5171, 8538, and 12646). |
| A–357–804 | 731–TA–470 | Silicon metal/Argentina | American Alloys, Elkem Metals, Globe Metallurgical, Silicon Metaltech, SiMETCO, SKW Alloys, International Union of Electronics, Electrical, Machine and Furniture Workers (Local 693), Oil, Chemical and Atomic Workers (Local 389), Textile Processors, Service Trades, Health Care Professional and Technical Employees (Local 60), United Steelworkers of America (Locals 5171, 8538, and 12646). |
| A–570–819 | 731–TA–567 | Ferrosilicon/China | AIMCOR, Alabama Silicon, American Alloys, Globe Metallurgical, Silicon Metaltech, Oil, Chemical and Atomic Workers (Local 389), United Autoworkers of America (Local 523), United Steelworkers of America (Locals 2528, 3081, 5171, and 12646). |
| A–843–804 | 731–TA–566 | Ferrosilicon/Kazakhstan | AIMCOR, Alabama Silicon, American Alloys, Globe Metallurgical, Silicon Metaltech, Oil, Chemical and Atomic Workers (Local 389), United Autoworkers of America (Local 523), United Steelworkers of America (Locals 2528, 3081, 5171, and 12646). |
| A–823–804 | 731–TA–569 | Ferrosilicon/Ukraine | AIMCOR, Alabama Silicon, American Alloys, Globe Metallurgical, Silicon Metaltech, Oil, Chemical and Atomic Workers (Local 389), United Autoworkers of America (Local 523), United Steelworkers of America (Locals 2528, 3081, 5171, and 12646). |
| C–307–808 | 303–TA–23 | Ferrosilicon/Venezuela | AIMCOR, Alabama Silicon, American Alloys, Globe Metallurgical, Silicon Metaltech, Oil, Chemical and Atomic Workers (Local 389), United Autoworkers of America (Local 523), United Steelworkers of America (Locals 2528, 3081, 5171, and 12646). |
| A–821–804 | 731–TA–568 | Ferrosilicon/Russia | AIMCOR, Alabama Silicon, American Alloys, Globe Metallurgical, Silicon Metaltech, Oil, Chemical and Atomic Workers (Local 389), United Autoworkers of America (Local 523), United Steelworkers of America (Locals 2528, 3081, 5171, and 12646). |

| Commerce No. | Commission case No. | Case name | Petitioners/supporters |
|---|---|---|---|
| A–307–807 | 731–TA–570 | Ferrosilicon/Venezuela | AIMCOR, Alabama Silicon, American Alloys, Globe Metallurgical, Silicon Metaltech, Oil, Chemical and Atomic Workers (Local 389), United Autoworkers of America (Local 523), United Steelworkers of America (Locals 2528, 3081, 5171, and 12646). |
| A–351–820 | 731–TA–641 | Ferrosilicon/Brazil | AIMCOR, Alabama Silicon, American Alloys, Globe Metallurgical, Silicon Metaltech, Oil, Chemical and Atomic Workers (Local 389), United Autoworkers of America (Local 523). United Steelworkers of America (Locals 2528, 3081, 5171, and 12646). |
| A–823–805 | 731–TA–673 | Silicomanganese/Ukraine | Elkem Metals, Oil, Chemical and Atomic Workers (Local 3–639). |
| A–351–824 | 731–TA–671 | Silicomanganese/Brazil | Elkem Metals, Oil, Chemical and Atomic Workers (Local 3–639). |
| A–570–828 | 731–TA–672 | Silicomanganese/China | Elkem Metals, Oil, Chemical and Atomic Workers (Local 3–639). |
| A–583–820 | 731–TA–625 | Helical spring lock washers/Taiwan. | Illinois Tool Works. |
| A–570–822 | 731–TA–624 | Helical spring lock washers/China. | Illinois Tool Works. |
| A–533–809 | 731–TA–639 | Forged stainless steel flanges/India. | Gerlin, Ideal Forging, Maass Flange, Markovitz Enterprises. |
| A–583–821 | 731–TA–640 | Forged stainless steel flanges/Taiwan. | Gerlin, Ideal Forging, Maass Flange, Markovitz Enterprises. |
| A–421–805 | 731–TA–652 | Aramid fiber/Netherlands | E.I. du Pont de Nemours. |
| C–475–812 | 701–TA–355 | Grain-oriented silicon electrical steel/Italy. | Allegheny Ludlum, Armco Steel, Butler Armco Independent Union, United Steelworkers of America, Zanesville Armco Independent Union. |
| A–588–831 | 731–TA–660 | Grain-oriented silicon electrical steel/Japan. | Allegheny Ludlum, Armco Steel, United Steelworkers of America. |
| A–475–811 | 731–TA–659 | Grain-oriented silicon electrical steel/Italy. | Allegheny Ludlum, Armco Steel, Butler Armco Independent Union, United Steelworkers of America, Zanesville Armco Independent Union. |
| A–570–831 | 731–TA–683 | Fresh garlic/China | A&D Christopher Ranch, Belridge Packing, Colusa Produce, Denice & Filice Packing, El Camino Packing, The Garlic Company, Vessey and Company. |
| A–570–826 | 731–TA–663 | Paper clips/China | ACCO USA, Labelon/Noesting, TRICO Manufacturing. |
| A–570–827 | 731–TA–669 | Cased pencils/China | Blackfeet Indian Writing Instrument, Dixon-Ticonderoga, Empire Berol, Faber-Castell, General Pencil, J.R. Moon Pencil, Musgrave Pen & Pencil, Panda, Writing Instrument Manufacturers Association, Pencil Section. |
| A–570–830 | 731–TA–677 | Coumarin/China | Rhone-Poulenc. |
| A–351–825 | 731–TA–678 | Stainless steel bar/Brazil | AL Tech Specialty Steel, Carpenter Technology, Crucible Specialty Metals, Electralloy, Republic Engineered Steels, Slater Steels, Talley Metals Technology, United Steelworkers of America. |
| A–533–810 | 731–TA–679 | Stainless steel bar/India | AL Tech Specialty Steel, Carpenter Technology, Crucible Specialty Metals, Electralloy, Republic Engineered Steels, Slater Steels, Talley Metals Technology, United Steelworkers of America. |
| A–588–833 | 731–TA–681 | Stainless steel bar/Japan | AL Tech Specialty Steel, Carpenter Technology, Crucible Specialty Metals, Electralloy, Republic Engineered Steels, Slater Steels, Talley Metals Technology, United Steelworkers of America. |
| A–469–805 | 731–TA–682 | Stainless steel bar/Spain | AL Tech Specialty Steel, Carpenter Technology, Crucible Specialty Metals, Electralloy, Republic Engineered Steels, Slater Steels, Talley Metals Technology, United Steelworkers of America. |
| A–570–836 | 731–TA–718 | Glycine/China | Chattem, Hampshire Chemical. |
| A–570–832 | 731–TA–696 | Pure magnesium/China | Dow Chemical, Magnesium Corporation of America, International Union of Operating Engineers (Local 564), United Steelworkers of America (Local 8319). |
| A–570–835 | 731–TA–703 | Furfuryl alcohol/China | QO Chemicals. |
| A–549–812 | 731–TA–705 | Furfuryl alcohol/Thailand | QO Chemicals. |
| A–821–807 | 731–TA–702 | Ferrovanadium and nitrided vanadium/Russia. | Shieldalloy Metallurgical. |
| A–549–813 | 731–TA–706 | Canned pineapple/Thailand | Maui Pineapple, International Longshoreman's and, Warehouseman's Union. |
| A–357–809 | 731–TA–707 | Seamless pipe/Argentina | Koppel Steel, Quanex, Timken. |
| A–351–826 | 731–TA–708 | Seamless pipe/Brazil | Koppel Steel, Quanex, Timken. |
| A–428–820 | 731–TA–709 | Seamless pipe/Germany | Koppel Steel, Quanex, Timken. |
| A–475–814 | 731–TA–710 | Seamless pipe/Italy | Koppel Steel, Quanex, Timken. |
| C–475–815 | 701–TA–362 | Seamless pipe/Italy | Koppel Steel, Quanex, Timken. |

| Commerce No. | Commission case No. | Case name | Petitioners/supporters |
|---|---|---|---|
| C–475–817 | 701–TA–364 | Oil country tubular goods/Italy. | IPSCO, Koppel Steel, Lone Star Steel, Maverick Tube, Newport Steel, North Star Steel, U.S. Steel, USS/Kobe . |
| A–357–810 | 731–TA–711 | Oil country tubular goods/Argentina. | IPSCO Koppel Steel, Lone Star Steel, Maverick Tube, Newport Steel, North Star Steel, U.S. Steel, USS/Kobe. |
| A–475–816 | 731–TA–713 | Oil country tubular goods/Italy. | Bellville Tube, IPSCO, Koppel Steel, Lone Star Steel, Maverick Tube, Newport Steel, North Star Steel, U.S. Steel, USS/Kobe. |
| A–588–835 | 731–TA–714 | Oil country tubular goods/Japan. | IPSCO, Koppel Steel, Maverick Tube, Newport Steel, U.S. Steel. |
| A–580–825 | 731–TA–715 | Oil country tubular goods/Korea. | Bellville Tube, IPSCO, Koppel Steel, Lone Star Steel, Maverick Tube, Newport Steel, North Star Steel, U.S. Steel, USS/Kobe. |
| A–201–817 | 731–TA–716 | Oil country tubular goods/Mexico. | IPSCO, Koppel Steel, Maverick Tube, Newport Steel, North Star Steel, U.S. Steel, USS/Kobe. |
| A–570–840 | 731–TA–724 | Manganese metal/China | Elkem Metals, Kerr-McGee. |
| A–570–842 | 731–TA–726 | Polyvinyl alcohol/China | Air Products and Chemicals. |
| A–588–836 | 731–TA–727 | Polyvinyl alcohol/Japan | Air Products and Chemicals. |
| A–583–824 | 731–TA–729 | Polyvinyl alcohol/Taiwan | Air Products and Chemicals. |
| A–588–838 | 731–TA–739 | Clad steel plate/Japan | Lukens Steel. |
| C–475–819 | 701–TA–365 | Pasta/Italy | Borden, Gooch Foods, Hershey Foods. |
| C–489–806 | 701–TA–366 | Pasta/Turkey | Borden, Gooch Foods, Hershey Foods. |
| A–475–818 | 731–TA–734 | Pasta/Italy | Borden, Gooch Foods, Hershey Foods. |
| A–489–805 | 731–TA–735 | Pasta/Turkey | Borden, Gooch Foods, Hershey Foods. |
| A–428–821 | 731–TA–736 | Large newspaper printing presses/Germany. | Rockwell Graphics Systems |
| A–588–837 | 731–TA–737 | Large newspaper printing presses/Japan. | Rockwell Graphics Systems. |
| A–201–820 | 731–TA–747 | Fresh tomatoes/Mexico | Accomack County Farm Bureau, Ad Hoc Group of Florida, California, Georgia, Pennsylvania, South Carolina, Tennessee, and Virginia Tomato Growers, Florida Farm Bureau Federation, Florida Fruit and Vegetable Association, Florida Tomato Exchange, Florida Tomato Growers Exchange, Gadsden County Tomato Growers Association, South Carolina Tomato. |
| A–588–839 | 731–TA–740 | Sodium azide/Japan | American Azide. |
| A–570–844 | 731–TA–741 | Melamine institutional dinnerware/China. | Carlisle Food Service Products, Lexington United, Plastics Manufacturing. |
| A–560–801 | 731–TA–742 | Melamine institutional dinnerware/Indonesia. | Carlisle Food Service Products, Lexington United, Plastics Manufacturing. |
| A–583–825 | 731–TA–742 | Melamine institutional dinnerware/Taiwan. | Carlisle Food Service Products, Lexington United, Plastics Manufacturing. |
| A–570–846 | 731–TA–744 | Brake rotors/China | Brake Parts, Kelsey Hayes, Kinetic Parts Manufacturing, Iroquois Tool Systems, Overseas Auto Parts, Wagner Brake. |
| A–489–807 | 731–TA–745 | Steel concrete reinforcing bar/Turkey. | AmeriSteel, New Jersey Steel. |
| A–588–840 | 731–TA–748 | Gas turbo-compressor systems/Japan. | Demag Delaval, Dresser-Rand, United Steelworkers of America. |
| A–570–847 | 731–TA–749 | Persulfates/China | FMC. |
| A–570–848 | 731–TA–752 | Crawfish tail meat/China | Crawfish Processors Alliance. |
| A–588–841 | 731–TA–750 | Vector supercomputers/Japan. | Cray Research. |
| A–570–849 | 731–TA–753 | Cut-to-length carbon steel plate/China. | Bethlehem Steel, Geneva Steel, Gulf States Steel, U.S. Steel, United Steelworkers of America. |
| A–821–808 | 731–TA–754 | Cut-to-length carbon steel plate/Russia. | Bethlehem Steel, Geneva Steel, Gulf States Steel, U.S. Steel, United Steelworkers of America. |
| A–791–804 | 731-TA–755 | Cut-to-length carbon steel plate/South Africa. | Bethlehem Steel, Geneva Steel, Gulf States Steel, U.S. Steel, United Steelworkers of America. |
| A–823–808 | 731–TA–756 | Cut-to-length carbon steel plate/Ukraine. | Bethlehem Steel, Geneva Steel, Gulf States Steel, U.S. Steel, United Steelworkers of America. |
| A–570–850 | 731–TA–757 | Collated roofing nails/China. | Illinois Tool Works, International Staple and Machines, Stanley-Bostitch. |
| A–583–826 | 731–TA–759 | Collated roofing nails/Taiwan. | Illinois Tool Works, International Staple and Machines, Stanley-Bostitch. |
| A–583–827 | 731–TA–762 | SRAMs/Taiwan | Micron Technology. |
| A–337–803 | 731–TA–768 | Fresh Atlantic salmon/Chile | Atlantic Salmon of Maine, Cooke Aquaculture US, DE Salmon, Global Aqua USA, Island Aquaculture, Maine Coast Nordic, Scan Am Fish Farms, Treats Island Fisheries, Trumpet Islands Salmon Farm. |

| Commerce No. | Commission case No. | Case name | Petitioners/supporters |
|---|---|---|---|
| C–475–821 | 701–TA–373 | Stainless steel wire rod/Italy. | AL Tech Specialty Steel, Carpenter Technology, Republic Engineered Steels, Talley Metals Technology, United Steelworkers of America. |
| A–475–820 | 731–TA–770 | Stainless steel wire rod/Italy. | AL Tech Specialty Steel, Carpenter Technology, Republic Engineered Steels, Talley Metals Technology, United Steelworkers of America. |
| A–588–843 | 731–TA–771 | Stainless steel wire rod/Japan. | AL Tech Specialty Steel, Carpenter Technology, Republic Engineered Steels, Talley Metals Technology, United Steelworkers of America. |
| A–580–829 | 731–TA–772 | Stainless steel wire rod/Korea. | AL Tech Specialty Steel, Carpenter Technology, Republic Engineered Steels, Talley Metals Technology, United Steelworkers of America. |
| A–469–807 | 731–TA–773 | Stainless steel wire rod/Spain. | AL Tech Specialty Steel, Carpenter Technology, Republic Engineered Steels, Talley Metals Technology, United Steelworkers of America. |
| A–401–806 | 731–TA–774 | Stainless steel wire rod/Sweden. | AL Tech Specialty Steel, Carpenter Technology, Republic Engineered Steels, Talley Metals Technology, United Steelworkers of America. |
| A–583–828 | 731–TA–775 | Stainless steel wire rod/Taiwan. | AL Tech Specialty Steel, Carpenter Technology, Republic Engineered Steels, Talley Metals Technology, United Steelworkers of America. |
| A–337–804 | 731–TA–776 | Preserved mushrooms/Chile. | L.K. Bowman, Modern Mushroom Farms, Monterey Mushrooms, Mount Laurel Canning, Mushroom Canning, Southwood Farms, Sunny Dell Foods, United Canning. |
| A–570–851 | 731–TA–777 | Preserved mushrooms/China. | L.K. Bowman, Modern Mushroom Farms, Monterey Mushrooms, Mount Laurel Canning, Mushroom Canning, Southwood Farms, Sunny Dell Foods, United Canning. |
| A–533–813 | 731–TA–778 | Preserved mushrooms/India. | L.K. Bowman, Modern Mushroom Farms, Monterey Mushrooms, Mount Laurel Canning, Mushroom Canning, Southwood Farms, Sunny Dell Foods, United Canning. |
| A–560–802 | 731–TA–779 | Preserved mushrooms/Indonesia. | L.K. Bowman, Modern Mushroom Farms, Monterey Mushrooms, Mount Laurel Canning, Mushroom Canning, Southwood Farms, Sunny Dell Foods, United Canning. |
| C–423–809 | 701–TA–376 | Stainless steel plate in coils/Belgium. | Armco Steel, Lukens Steel, United Steelworkers of America. |
| C–475–823 | 701–TA–377 | Stainless steel plate in coils/Italy. | Armco Steel, J&L Specialty Steel, Lukens Steel, United Steelworkers of America. |
| C–791–806 | 701–TA–379 | Stainless steel plate in coils/South Africa. | Armco Steel, J&L Specialty Steel, Lukens Steel, United Steelworkers of America. |
| A–423–808 | 731–TA–788 | Stainless steel plate in coils/Belgium. | Armco Steel, Lukens Steel, North American Stainless, United Steelworkers of America. |
| A–122–830 | 731–TA–789 | Stainless steel plate in coils/Canada. | Armco Steel, J&L Specialty Steel, Lukens Steel, North American Stainless. |
| A–475–822 | 731–TA–790 | Stainless steel plate in coils/Italy. | Armco Steel, J&L Specialty Steel, Lukens Steel, United Steelworkers of America. |
| A–580–831 | 731–TA–791 | Stainless steel plate in coils/Korea. | Armco Steel, J&L Specialty Steel, Lukens Steel, North American Stainless, United Steelworkers of America. |
| A–791–805 | 731–TA–792 | Stainless steel plate in coils/South Africa. | Armco Steel, J&L Specialty Steel, Lukens Steel, North American Stainless, United Steelworkers of America. |
| A–583–830 | 731–TA–793 | Stainless steel plate in coils/Taiwan. | Armco Steel, J&L Specialty Steel, Lukens Steel, North American Stainless, United Steelworkers of America. |
| A–560–803 | 731–TA–787 | Extruded rubber thread/Indonesia. | North American Rubber Thread. |
| A–588–846 | 731–TA–807 | Hot-rolled carbon steel flat products/Japan. | Bethlehem Steel, California Steel Industries, Gallatin Steel, Geneva Steel, Gulf States Steel, IPSCO, Ispat/Inland, LTV Steel, Steel Dynamics, U.S. Steel, Weirton Steel, Independent Steelworkers, United Steelworkers of America. |
| C–351–829 | 701–TA–384 | Hot-rolled carbon steel flat products/Brazil. | Bethlehem Steel, California Steel Industries, Gallatin Steel, Geneva Steel, Gulf States Steel, IPSCO, Ispat/Inland, LTV Steel, National Steel, Steel Dynamics, U.S. Steel, Weirton Steel, Independent Steelworkers, United Steelworkers of America. |

| Commerce No. | Commission case No. | Case name | Petitioners/supporters |
|---|---|---|---|
| A–351–828 | 731–TA–806 | Hot-rolled carbon steel flat products/Brazil. | Bethlehem Steel, California Steel Industries, Gallatin Steel, Geneva Steel, Gulf States Steel, IPSCO, Ispat/Inland, LTV Steel, National Steel, Steel Dynamics, U.S. Steel, Weirton Steel, Independent Steelworkers, United Steelworkers of America. |
| A–821–809 | 731–TA–808 | Hot-rolled carbon steel flat products/Russia. | Bethlehem Steel, California Steel Industries, Gallatin Steel, Geneva Steel, Gulf States Steel, IPSCO, Ispat/Inland, LTV Steel, National Steel, Steel Dynamics, U.S. Steel, Weirton Steel, Independent Steelworkers, United Steelworkers of America. |
| A–427–814 | 731–TA–797 | Stainless steel sheet and strip/France. | Allegheny Ludlum, Armco Steel, Bethlehem Steel, Butler Armco Independent Union, United Steelworkers of America, Zanesville Armco Independent Organization. |
| A–428–825 | 731–TA–798 | Stainless steel sheet and strip/Germany. | Allegheny Ludlum, Armco Steel, Germany Bethlehem Steel, J&L Specialty Steel, Butler Armco Independent Union, United Steelworkers of America, Zanesville Armco Independent Organization. |
| A–475–824 | 731–TA–799 | Stainless steel sheet and strip/Italy. | Allegheny Ludlum, Armco Steel, Bethlehem Steel, J&L Specialty Steel, Butler Armco Independent Union, United Steelworkers of America, Zanesville Armco Independent Organization. |
| A–588–845 | 731–TA–800 | Stainless steel sheet and strip/Japan. | Allegheny Ludlum, Armco Steel, Bethlehem Steel, J&L Specialty Steel, Butler Armco Independent Union, United Steelworkers of America, Zanesville Armco Independent Organization. |
| A–580–834 | 731–TA–801 | Stainless steel sheet and strip/Korea. | Allegheny Ludlum, Armco Steel, Bethlehem Steel, J&L Specialty Steel, Butler Armco Independent Union, United Steelworkers of America, Zanesville Armco Independent Organization. |
| A–201–822 | 731–TA–802 | Stainless steel sheet and strip/Mexico. | Allegheny Ludlum, Bethlehem Steel, J&L Specialty Steel, United Steelworkers of America. |
| A–583–831 | 731–TA–803 | Stainless steel sheet and strip/Taiwan. | Allegheny Ludlum, Armco Steel, Bethlehem Steel, J&L Specialty Steel, Butler Armco Independent Union, United Steelworkers of America, Zanesville Armco Independent Organization. |
| A–412–818 | 731–TA–804 | Stainless steel sheet and strip/United Kingdom. | Allegheny Ludlum, Armco Steel, Bethlehem Steel, J&L Specialty Steel, Butler Armco Independent Union, United Steelworkers of America, Zanesville Armco Independent Organization. |
| C–427–815 | 701–TA–380 | Stainless steel sheet and strip/France. | Allegheny Ludlum, Armco Steel, Bethlehem Steel, Butler Armco Independent Union, United Steelworkers of America, Zanesville Armco Independent Organization. |
| C–475–825 | 701–TA–381 | Stainless steel sheet and strip/Italy. | Allegheny Ludlum, Armco Steel, Bethlehem Steel, J&L Specialty Steel, Butler Armco Independent Union, United Steelworkers of America, Zanesville Armco Independent Organization. |
| C–580–835 | 701–TA–382 | Stainless steel sheet and strip/Korea. | Allegheny Ludlum, Armco Steel, Bethlehem Steel, J&L Specialty Steel, Butler Armco Independent Union, United Steelworkers of America, Zanesville Armco Independent Organization. |
| A–570–852 | 731–TA–814 | Creatine monohydrate/China. | Pfanstiehl Laboratories. |
| C–427–817 | 701–TA–387 | Cut-to-length carbon steel plate/France. | Bethlehem Steel, Geneva Steel, IPSCO Steel, U.S. Steel, United Steelworkers of America. |
| C–533–818 | 701–TA–388 | Cut-to-length carbon steel plate/India. | Bethlehem Steel, Geneva Steel, Gulf States Steel, IPSCO Steel, Tuscaloosa Steel, U.S. Steel, United Steelworkers of America. |
| C–560–806 | 701–TA–389 | Cut-to-length carbon steel plate/Indonesia. | Bethlehem Steel, Geneva Steel, Gulf States Steel, IPSCO Steel, Tuscaloosa Steel, U.S. Steel, United Steelworkers of America. |
| C–475–827 | 701–TA–390 | Cut-to-length carbon steel plate/Italy. | Bethlehem Steel, Geneva Steel, Gulf States Steel, IPSCO Steel, U.S. Steel, United Steelworkers of America. |
| C–580–837 | 701–TA–391 | Cut-to-length carbon steel plate/Korea. | Bethlehem Steel, Geneva Steel, Gulf States Steel, IPSCO Steel, Tuscaloosa Steel, U.S. Steel, United Steelworkers of America. |
| A–427–816 | 731–TA–816 | Cut-to-length carbon steel plate/France. | Bethlehem Steel, Geneva Steel, IPSCO Steel, U.S. Steel, United Steelworkers of America. |
| A–533–817 | 731–TA–817 | Cut-to-length carbon steel plate/India. | Bethlehem Steel, Geneva Steel, Gulf States Steel, IPSCO Steel, Tuscaloosa Steel, U.S. Steel, United Steelworkers of America. |

| Commerce No. | Commission case No. | Case name | Petitioners/supporters |
|---|---|---|---|
| A–560–805 | 731–TA–818 | Cut-to-length carbon steel plate/Indonesia. | Bethlehem Steel, Geneva Steel, Gulf States Steel, IPSCO Steel, Tuscaloosa Steel, U.S. Steel, United Steelworkers of America. |
| A–475–826 | 731–TA–819 | Cut-to-length carbon steel plate/Italy. | Bethlehem Steel, Geneva Steel, Gulf States Steel, IPSCO Steel, U.S. Steel, United Steelworkers of America. |
| A–588–847 | 731–TA–820 | Cut-to-length carbon steel plate/Japan. | Bethlehem Steel, Geneva Steel, Gulf States Steel, IPSCO Steel, Tuscaloosa Steel, U.S. Steel, United Steelworkers of America. |
| A–580–836 | 731–TA–821 | Cut-to-length carbon steel plate/Korea. | Bethlehem Steel, Geneva Steel, Gulf States Steel, IPSCO Steel, Tuscaloosa Steel, U.S. Steel, United Steelworkers of America. |
| A–507–502 | 731–TA–287 | Raw in-shell pistachios/Iran | Blackwell Land, California Pistachio Orchard, T.M. Duche Nut, Keenan Farms, Kern Pistachio Hulling & Drying, Los Ranchos de Poco Pedro, Pistachio Producers of California. |
| C–507–501 | None | Raw in-shell pistachios/Iran | No case at the Commission; no service list at Commerce. |
| C–507–601 | None | Roasted in-shell pistachios/Iran. | No case at the Commission; no service list at Commerce. |
| A–821–811 | 731–TA–856 | Ammonium nitrate/Russia | Air Products and Chemicals, Mississippi Chemical, El Dorado Chemical, Nitram, LaRoche, Wil-Gro Fertilizer. |
| A–580–839 | 731–TA–825 | Polyester staple fiber/Korea. | E.I. du Pont de Nemours, Arteva Specialties S.a.r.l., Wellman, Intercontinental Polymers. |
| A–583–833 | 731–TA–826 | Polyester staple fiber/Taiwan. | Arteva Specialties S.a.r.l., Wellman, Intercontinental Polymers. |
| A–570–855 | 731–TA–841 | Non-frozen apple juice concentrate/China. | Coloma Frozen Foods, Green Valley Apples of California, Knouse Foods Coop, Mason County Fruit Packers Coop, Tree Top. |
| A–588–852 | 731–TA–853 | Structural steel beams/Japan. | Northwestern Steel and Wire, Nucor-Yamato Steel, TXI-Chaparral Steel, United Steelworkers of America. |
| C–580–842 | 701–TA–401 | Structural steel beams/Korea. | Northwestern Steel and Wire, Nucor-Yamato Steel, TXI-Chaparral Steel, United Steelworkers of America. |
| A–580–841 | 731–TA–854 | Structural steel beams/Korea. | Northwestern Steel and Wire, Nucor-Yamato Steel, TXI-Chaparral Steel, United Steelworkers of America. |
| A–570–856 | 731–TA–851 | Synthetic indigo/China | Buffalo Color, United Steelworkers of America. |
| A–588–850 | 731–TA–847 | Large-diameter carbon steel seamless pipe/Japan. | Timken, U.S. Steel, USS/Kobe, United Steelworkers of America. |
| A–588–851 | 731–TA–847 | Small-diameter carbon steel seamless pipe/Japan. | Koppel Steel, Sharon Tube, Timken, U.S. Steel, USS/Kobe, Vision Metals' Gulf States Tube, United Steelworkers of America. |
| A–791–808 | 731–TA–850 | Small-diameter carbon steel seamless pipe/South Africa. | Koppel Steel, Sharon Tube, Timken, U.S. Steel, USS/Kobe, Vision Metals' Gulf States Tube, United Steelworkers of America. |
| A–485–805 | 731–TA–849 | Small-diameter carbon steel seamless pipe/Romania. | Koppel Steel, Sharon Tube, Timken, U.S. Steel, USS/Kobe, Vision Metals' Gulf States Tube, United Steelworkers of America. |
| A–201–827 | 731–TA–848 | Large-diameter carbon steel seamless pipe/Mexico. | Timken, U.S. Steel, USS/Kobe, United Steelworkers of America. |
| A–851–802 | 731–TA–846 | Small-diameter carbon steel seamless pipe/Czech Republic. | Koppel Steel, Sharon Tube, Timken, U.S. Steel, USS/Kobe, Vision Metals' Gulf States Tube, United Steelworkers of America. |
| A–570–853 | 731–TA–828 | Aspirin/China | Rhodia. |
| A–580–812 | 731–TA–556 | DRAMs of 1 megabit and above/Korea. | Micron Technology, NEC Electronics, Texas Instruments. |
| A–475–828 | 731–TA–865 | Stainless steel butt-weld pipe fittings/Italy. | Alloy Piping Products, Markovitz Enterprises, Gerlin, Taylor Forge Stainless. |
| A–557–809 | 731–TA–866 | Stainless steel butt-weld pipe fittings/Malaysia. | Alloy Piping Products, Markovitz Enterprises, Gerlin, Taylor Forge Stainless. |
| A–565–801 | 731–TA–867 | Stainless steel butt-weld pipe fittings/Philippines. | Alloy Piping Products, Markovitz Enterprises,Gerlin, Taylor Forge Stainless. |
| A–588–854 | 731–TA–860 | Tin-mill products/Japan | Weirton Steel, Independent Steelworkers, United Steelworkers of America. |
| A–588–856 | 731–TA–888 | Stainless steel angle/Japan | Slater Steels, United Steelworkers of America. |
| A–580–846 | 731–TA–889 | Stainless steel angle/Korea | Slater Steels, United Steelworkers of America. |
| A–469–810 | 731–TA–890 | Stainless steel angle/Spain | Slater Steels, United Steelworkers of America. |

Dated: July 31, 2001.

**Stuart P. Seidel,**

*Assistant Commissioner, Office of Regulations and Rulings.*

[FR Doc. 01–19477 Filed 8–2–01; 8:45 am]

BILLING CODE 4820–02–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Tax Counseling for the Elderly (TCE) Program Availability of Application Packages

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

**ACTION:** Availability of TCE application packages.

**SUMMARY:** This document provides notice of the availability of Application Packages for the 2002 Tax Counseling for the Elderly (TCE) Program.

**DATES:** Application Packages are available from the IRS at this time. The deadline for submitting an application package to the IRS for the 2002 Tax Counseling for the Elderly (TCE) Program is August 24, 2001.

**ADDRESSES:** Application Packages may be requested by contacting: Internal Revenue Service, 5000 Ellin Road, Lanham, MD 20706, Attention: Program Manager, Tax Counseling for the Elderly Program, W:CAR:SPEC:FO:GA, Building C–7, Room 185.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Lynn Tyler, W:CAR:SPEC:FO:GA, Building C–7, Room 185, Internal Revenue Service, 5000 Ellin Road, Lanham, MD 20706. The non-toll-free telephone number is (202) 283–0189.

**SUPPLEMENTARY INFORMATION:** Authority for the Tax Counseling for the Elderly (TCE) Program is contained in Section 163 of the Revenue Act of 1978, Public Law 95–600, (92 Stat. 12810), November 6, 1978. Regulations were published in the **Federal Register** at 44 FR 72113 on December 13, 1979. Section 163 gives the IRS authority to enter into cooperative agreements with private or public non-profit agencies or organizations to establish a network of trained volunteers to provide free tax information and return preparation assistance to elderly individuals. Elderly individuals are defined as individuals age 60 and over at the close of their taxable year.

Cooperative agreements will be entered into based upon competition among eligible agencies and organizations. Because applications are being solicited before the FY 2002 budget has been approved, cooperative agreements will be entered into subject to appropriation of funds. Once funded, sponsoring agencies and organizations will receive a grant from the IRS for administrative expenses and to reimburse volunteers for expenses incurred in training and in providing tax return assistance. The Tax Counseling for the Elderly (TCE) Program is referenced in the Catalog of Federal Domestic Assistance in Section 21.006.

**Jim Grimes,**

*Director, Field Operations, Stakeholder Partnership, Education and Communication, Wage and Investment Division.*

[FR Doc. 01–19199 Filed 8–2–01; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Friday,
August 3, 2001

# Part II

# Environmental Protection Agency

**40 CFR Part 52**

**Approval and Promulgation of Implementation Plans; Indiana; Ozone; Proposed Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[IN136–1; FRL–7022–4]**

## Approval and Promulgation of Implementation Plans; Indiana; Ozone

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the following as revisions to the Indiana State Implementation Plan (SIP) for the Chicago-Gary-Lake County ozone nonattainment area, i.e., for the Indiana portion of this bi-state ozone nonattainment area: An ozone attainment demonstration; a post-1999 ozone Rate-Of-Progress (ROP) plan; a contingency measures plan for both the ozone attainment demonstration and the post-1999 ROP plan; a commitment to conduct a mid-course review of the ozone attainment demonstration; motor vehicle conformity emission budgets for Volatile Organic Compounds (VOC) and Oxides of Nitrogen ( $NO_X$) and the State's commitment to revise the emission budgets using the MOBILE6 emissions factor model; and a Reasonably Available Control Measure (RACM) analysis. EPA proposes to revise the existing $NO_X$ emissions control waiver for the Indiana portion of the Chicago-Gary-Lake County ozone nonattainment area to eliminate the waiver for those $NO_X$ emission sources that the State has assumed will be controlled in the ozone attainment demonstration. These controlled sources include Electrical Generating Units (EGUs), major non-EGU boilers and turbines, and major cement kilns in Lake and Porter Counties. The existing $NO_X$ emissions control waiver remains in place for Reasonably Available Control Technology (RACT), New Source Review (NSR), and certain requirements of vehicle Inspection and Maintenance (I/M) and transportation and general conformity. Finally, EPA proposes to incorporate into the SIP a portion of an agreed order between U.S. Steel (currently USX Corporation) and the Indiana Department of Environmental Management (IDEM) signed by IDEM on March 22, 1996. The portion of the agreed order proposed for incorporation into the SIP requires U.S. Steel to establish a coke plant process water treatment plant at its Gary Works.

**DATES:** Written comments must be received on or before September 4, 2001.

**ADDRESSES:** Written comments should be sent to J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittals addressed in this proposed rule and other relevant materials are available for public inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604 (please telephone Edward Doty at (312) 886–6057 before visiting the Region 5 office).

**FOR FURTHER INFORMATION CONTACT:** Edward Doty, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number: (312) 886–6057, E-Mail Address: doty.edward@epa.gov.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. Whenever ''you'' or ''me'' is used, we mean you the reader of this proposed rule or the sources subject to the requirements of the State as discussed in the State's submittal or in this proposed rule.

This section provides additional information by addressing the following topics and questions:

I. What Action is EPA Proposing Today?
II. Background Information
A. What is a State Implementation Plan (SIP)?
B. What is the Federal Approval Process for a SIP?
C. What Does Federal Approval of a State Regulation Mean?
D. What are EPA's Options for Action on a State SIP Submittal?
E. What Ozone Nonattainment Area is Addressed by the State Submittal Reviewed in This Proposed Rule?
F. What Prior EPA Rulemakings Relate to or Led to the State Submittal Reviewed in This Proposed Rule?
G. What is the Time Frame for EPA to Take Action on the State Submittal?
H. What are the Basic Components of the State Submittal and What are the Subjects Covered in this Proposed Rule?
III. Ozone Attainment Demonstration and Emissions Control Strategy
A. Background Information and Requirements Placed on the Ozone Attainment Demonstration
1. What Clean Air Act requirements apply to the State's ozone attainment demonstration?
2. What is the history of the State's ozone attainment demonstration and how is it related to EPA's $NO_X$ SIP Call?
3. What are the modeling requirements for the ozone attainment demonstrations?
4. What additional analyses may be considered when the ozone modeling fails to show attainment of the ozone standard?
5. Besides the modeled attainment demonstration and adopted emission control strategy, what other elements must be addressed in an attainment demonstration SIP?
6. What are the relevant EPA policy and guidance documents?
B. Technical Review of the State's Submittal
1. When was the attainment demonstration addressed in public hearings, and when was the attainment demonstration submitted to the EPA?
2. What are the basic technical components of the submittal?
3. What modeling approach was used in the analyses to develop and validate the ozone modeling system?
4. How were the 1996 base year emissions developed?
5. What procedures and sources of projection data were used to project the emissions to the attainment year?
6. How were the 1996 and 2007 emission estimates quality assured?
7. What is the adopted emissions control strategy?
8. What were the ozone modeling results for the base period and for the future attainment period with the selected emissions control strategy?
9. Do the modeling results demonstrate attainment of the ozone standard?
10. Does the attainment demonstration depend on future reductions of regional emissions?
11. Has the State adopted all of the regulations/rules needed to support the ozone attainment strategy and demonstration?
C. EPA's Evaluation of the Ozone Attainment Demonstration Portion of the State's Submittal
1. Did the State adequately document the techniques and data used to derive the modeling input data and modeling results of the analyses?
2. Did the modeling procedures and input data used comply with the Clean Air Act requirements?
3. Did the State adequately demonstrate attainment of the ozone standard?
4. Has Indiana adequately documented the adopted emissions control strategy?
5. Is the emissions control strategy acceptable?
IV. Post–1999 Rate-of-Progress (ROP) Plan
A. What is a Post-1999 ROP Plan?
B. What is the ROP Contingency Measure Requirement?
C. What Indiana Counties are Covered by the Post-1999 ROP Plan?
D. Who is Affected by the Indiana Post-1999 ROP Plan?
E. What Criteria Must a Post-1999 ROP Plan Meet to be Approved?
F. What Changes Did Indiana Make to the 1990 VOC Base Year Emissions Inventory In This Submission?
G. Why were the 1996 15 Percent ROP Target Level and the 1999 9 Percent ROP Target Level for Lake and Porter

Counties Recalculated, and Does Indiana Have to Revise The Prior ROP Plans?
H. How Were the 1996 and 1999 Target Emission Levels for Lake and Porter Counties Recalculated?
I. How Were the Post-1999 Emission Targets and Emission Reduction Requirements Calculated?
J. What are the Criteria for Acceptable ROP Emission Control Strategies?
K. What are the Emission Control Measures In Indiana's Post-1999 ROP Plan?
L. Are the Emission Control Measures and Calculated Emission Reductions Acceptable to the EPA?
M. Are the Planned Emissions Reductions Adequate to Meet the ROP Emission Reduction Requirements, Including ROP Contingency Measure Requirements?
N. How Does The ROP Plan Affect Outstanding Plan Requirements for Contingency Measures on the 15 Percent ROP Plan and the Post-1996 9 Percent ROP Plan?
V. Contingency Measures Plan
A. What are the Requirements for Contingency Measures Under Section 172(c)(9) and Section 182(c)(9) of the CAA?
B. How Do the Northwest Indiana Attainment Demonstration and ROP SIP Address the Contingency Measure Requirements?
C. Do the Northwest Indiana Attainment Demonstration and ROP Plans Meet the Contingency Measure Requirements?
VI. Mid-Course Review Commitment
A. Did Indiana Submit a Mid-Course Review Commitment?
VII. $NO_X$ Waiver
A. What is the History of the $NO_X$ Emissions Control Waiver in the Chicago-Gary-Lake County Ozone Nonattainment Area?
B. What are the Conclusions of the State Regarding the Impact of the Ozone Attainment Demonstration on the $NO_X$ Control Waiver?
C. What are the Conclusions That Can Be Drawn Regarding the $NO_X$ Control Waiver From Data Contained in the State's Ozone Attainment Demonstration?
D. What are the EPA Conclusions Regarding the Existing $NO_X$ Waiver Given the Available Ozone Modeling Data?
VIII. Mobile Source Conformity Emissions Budgets and Commitment to Re-Model Using Mobile6
A. What Are the Requirements for Mobile Source Conformity Emissions Budgets?
B. How Were the Indiana Attainment Demonstration and ROP Emissions Budgets Developed?
C. Did Indiana Commit to Revise the Budgets When EPA Releases MOBILE6?
D. Are the Indiana Emissions Budgets Adequate for Conformity Purposes?
IX. Reasonably Available Control Measure (RACM) Analysis
A. What are the Requirements for RACM?
B. How Does This Submission Address the RACM Requirement?
C. Does the Northwest Indiana Attainment Demonstration Meet the RACM Requirement?
X. Administrative Requirements

## I. What Action Is EPA Proposing Today?

Based on a review of all available information, Clean Air Act (CAA) requirements, and relevant EPA guidance, we propose to approve: (1) Indiana's 1-hour ozone attainment demonstration for the Chicago-Gary-Lake County ozone nonattainment area; (2) Indiana's post-1999 ROP plan (an ROP plan covering the time period of November 15, 1999 through November 15, 2007) for the Indiana portion of the Chicago-Gary-Lake County ozone nonattainment area (the Northwest Indiana area); (3) Indiana's contingency measure plans for both the ozone attainment demonstration and the post-1999 ROP plan; (4) Indiana's commitment to conduct a mid-course review of the ozone attainment demonstration; (5) Indiana's ROP and attainment motor vehicle conformity emission budgets for VOC and $NO_X$ in the Northwest Indiana area; and (6) Indiana's RACM demonstration for the Northwest Indiana area.

We propose to modify an existing $NO_X$ emissions control waiver (the $NO_X$ emissions control waiver has been in place since January 1996) for the Northwest Indiana area. The existing $NO_X$ emissions control waiver was based on ozone modeling data showing that $NO_X$ emission reductions in the ozone nonattainment area would not contribute to attainment of the ozone standard in this nonattainment area. However, ozone modeling supporting the ozone attainment demonstration addressed in this proposed rule shows that statewide $NO_X$ emission controls at EGUs, major non-EGU boilers and turbines, and major cement kilns are beneficial and will contribute to attainment of the 1-hour standard in the nonattainment area and its downwind environs [1]. The attainment demonstration further shows that the ozone standard will be attained by the applicable attainment date without the use of additional $NO_X$ emission controls [2] (beyond other $NO_X$ emission controls already implemented and/or modeled in the ozone attainment demonstration) in the ozone nonattainment area. Consequently, such additional $NO_X$ emission controls are in excess of what is needed to attain the ozone standard.

We propose to modify the existing $NO_X$ control waiver to remove from the emissions control waiver the EGUs, major non-EGU boilers and turbines, and major cement kilns for which the State included emission controls in the ozone attainment demonstration. Based on the ''excess emissions'' control provisions of section 182(f)(2) of the CAA, however, we propose to retain the $NO_X$ waiver for RACT, NSR, and certain transportation and general conformity, and I/M [3] requirements.

Finally, we propose to incorporate into the SIP part of an agreed order between U.S. Steel and IDEM signed by IDEM on March 22, 1996. This part (section 3 of Exhibit E, ''Clean Water Coke Quench Project'') of the agreed order requires U.S. Steel to establish a coke plant process water treatment plant at its Gary Works, and results in VOC emissions reductions relied on in the post-1999 ROP plan. We are not incorporating the remaining portions of the agreed order into the SIP because the State is not relying on these portions of the agreed order to meet the CAA requirements addressed in this proposed rule.

## II. Background Information

### *A. What Is a State Implementation Plan (SIP)?*

Section 110 of the CAA requires states to develop air pollution control regulations (rules) and strategies to ensure that state air quality meets the National Ambient Air Quality Standards (NAAQS). Each state must submit the rules and emission control strategies to the EPA for approval and promulgation into a federally enforceable SIP.

Each federally approved SIP protects air quality primarily by addressing air pollution at its points of origin. The SIPs can be and generally are extensive, containing many state rules or other enforceable documents and supporting information, such as emission inventories, monitoring documentation, and modeled attainment demonstrations.

### *B. What Is the Federal Approval Process for a SIP?*

In order for state rules and emission control strategies to be incorporated into the federally enforceable SIPs, states

[1] It is not clear to what extent the $NO_X$ controls within the ozone nonattainment area itself will contribute to attainment of the ozone standard; the modeling results do not differentiate the impacts of $NO_X$ emission controls for a subpart of the State. Nonetheless, the State has relied on these $NO_X$ emission controls, both inside of the nonattainment area and statewide, to attain the ozone standard.

[2] The additional $NO_X$ emission controls not considered in the ozone attainment demonstration include $NO_X$ RACT, $NO_X$ NSR, and additional mobile source $NO_X$ controls, including vehicle inspection/maintenance (I/M) emission cutpoints.

[3] States with $NO_X$ waivers are still required to prepare motor vehicle emissions budgets consistent with the ozone attainment demonstrations and to use these emissions budgets in conformity analyses.

must formally adopt the rules and emission control strategies consistent with state and federal requirements. This process generally includes public notice, public hearings, public comment periods, and formal adoption by state-authorized rulemaking bodies.

Once a state rule or emissions control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and must seek additional public comment regarding our proposed action on the submission. If we receive adverse comments, we must address them prior to any final federal action (we generally address them in a final rulemaking action).

All state rules and supporting information approved by the EPA under section 110 of the CAA are incorporated into federally approved SIPs. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, part 52, titled ''Approval and Promulgation of Implementation Plans.'' The actual state rules which are approved are not reproduced in their entirety in the CFR, but are ''incorporated by reference,'' which means that EPA has approved given state rules with specific effective dates, has identified the rules in the CFR, and, thereby, has identified the full texts of the rules by reference.

*C. What Does Federal Approval of a State Regulation Mean?*

Enforcement of a state rule before and after it is incorporated into a federally approved SIP is primarily a state responsibility. After a rule is federally approved, however, section 113 of the CAA authorizes EPA to conduct enforcement actions against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

*D. What Are EPA's Options for Action on a State SIP Submittal?*

Depending on the circumstances unique to each of the SIP submissions, we may propose one or more of several types of approval, or disapproval in the alternative (or a combination if our rulemaking process involves separable portions of a SIP submission). In addition, these proposals may identify additional actions that may be necessary for a state to complete before EPA may fully approve the submissions.

The CAA provides for EPA to approve, disapprove, partially approve, or conditionally approve a state's submission. The EPA must fully approve a submission if it meets the requirements of the CAA.

If a submission is deficient in some way, EPA may disapprove the submission. In the alternative, if portions of the submission are approvable, EPA may partially approve and partially disapprove the submission, or may conditionally approve the submission based on a state's commitment to correct the deficiency by a date certain, not later than one year from the date of EPA's final conditional approval.

The EPA recognizes that, in some limited circumstances, it may be appropriate to issue a full approval for a submission that consists, in part, of an enforceable commitment by a state. Unlike the commitment for a submission correction under a conditional approval, such an enforceable commitment can be enforced in court by EPA or citizens. In addition, this type of commitment may extend beyond one year following EPA's final approval action. Thus, EPA may accept such an enforceable commitment where it is infeasible for the state to accomplish the necessary action(s) in the short term.

*E. What Ozone Nonattainment Area Is Addressed by the State Submittal Reviewed in This Proposed Rule?*

The December 21, 2000 submittal of IDEM reviewed here primarily deals with attainment of the 1-hour ozone standard in the Northwest Indiana area (the Indiana portion of the Chicago-Gary-Lake County ozone nonattainment area). As noted above, this area includes Lake and Porter Counties. We are separately rulemaking on the attainment plan for the Illinois portion of the Chicago-Gary-Lake County ozone nonattainment area.

*F. What Prior EPA Rulemakings Relate to or Led to the State Submittal Reviewed in This Proposed Rule?*

On December 16, 1999 (64 FR 70514), the EPA proposed to conditionally approve the 1-hour ozone attainment demonstration for the Northwest Indiana area submitted by IDEM on April 30, 1998. The April 30, 1998 attainment demonstration submittal was based on a range of possible emission control measures reflecting various emission control alternatives, and did not specify a single set of emission control measures that the State had adopted as an emissions control strategy. We based our December 16, 1999 proposed conditional approval on the State's commitment to adopt and submit, by December 31, 2000, a final ozone attainment demonstration SIP revision and a post-1999 ROP plan, including the necessary State-adopted air pollution control rules needed to support and complete the ozone attainment demonstration and post-1999 ROP plan. In the alternative, we proposed to disapprove the attainment demonstration if, by December 31, 2000, the State did not adopt an emissions control strategy supported by its modeled ozone attainment demonstration, and did not submit adequate motor vehicle emission budgets for VOC and $NO_X$ for the Northwest Indiana area that comply with EPA's transportation conformity regulations. In addition, we conditioned our approval on the State submitting, by December 31, 2000, an enforceable commitment to conduct a mid-course review of the ozone attainment plan in 2003. As noted below, this submittal time has been delayed until 2004 to allow the states to assess the impacts of the $NO_X$ SIP Call rules following their implementation.

The December 16, 1999 proposed rulemaking noted that, if the EPA issued a final conditional approval of the State's April 30, 1998 submission [4], the conditional approval would revert to a disapproval if the State did not adopt and submit a complete SIP submission with the following elements by December 31, 2000: (1) A final adopted ozone modeling analysis that fully assesses the impacts of regional $NO_X$ emissions reductions, models a specific local emissions reduction strategy, and reconsiders the effectiveness of the existing $NO_X$ emissions control waiver (see a discussion relating to the $NO_X$ emissions control waiver below); (2) adopted emission control measures needed to meet the post-1999 ROP requirements (a post-1999 ROP plan covering the period of November 15, 1999 through the ozone attainment year); and (3) local VOC and regional $NO_X$ emission control measures sufficient to support the final ozone attainment demonstration. If the State made this complete submission by December 31, 2000, we noted that we would propose action on the new submission for the purpose of determining whether to issue a final full approval of the ozone attainment demonstration.

As noted below, the December 21, 2000 submittal, in part, addresses a post-1999 ROP plan for the Northwest Indiana area. The post-1999 ROP plan provides required emission reductions in addition to Indiana's 15 percent ROP plan (VOC emission reductions

[4] To date, the EPA has not issued a final rule conditionally approving the State's April 30, 1998 submittal. As noted in this proposed rule, the State has submitted a revised ozone attainment plan, negating the need for the EPA to complete the conditional approval of the April 30, 1998 submittal.

occurring prior to November 15, 1996) and 9 percent post-1996 ROP plan (VOC emission reductions occurring prior to November 15, 1999) for this ozone nonattainment area. On July 18, 1997 (62 FR 38457), we published a final rule approving Indiana's 15 percent ROP plan. On January 26, 2000 (65 FR 4126), we published a final rule approving Indiana's post-1996 ROP plan. These final rules addressed the emission control measures selected by the State to achieve required ROP emission reductions, and addressed the State's calculation of the 1996 and 1999 VOC emission targets for the Northwest Indiana area.

The December 21, 2000 submittal includes, as part of the ozone attainment demonstration, the modeled impacts of regional $NO_X$ emission reductions. These regional $NO_X$ emission reductions must be reviewed in light of the fact that a $NO_X$ emissions reduction waiver exists for the Chicago-Gary-Lake County ozone nonattainment area. On January 26, 1996 (61 FR 2428), we published a final rule approving the $NO_X$ emissions control waiver based on a showing that $NO_X$ emission reductions in the ozone nonattainment area would not contribute to attainment of the 1-hour ozone standard. Through the January 26, 1996 rulemaking, the EPA granted exemptions from the RACT and NSR requirements for major stationary sources of $NO_X$ and from certain vehicle I/M and transportation and general conformity requirements for $NO_X$ in the Northwest Indiana area.[5]

Since EPA waived the $NO_X$ requirements based on a demonstration that $NO_X$ emission controls in the ozone nonattainment area are not beneficial toward attaining the ozone standard, the State may not receive credit for $NO_X$ emission controls in the ozone nonattainment area toward ROP requirements and attainment of the ozone standard unless the State can demonstrate that such emission controls are actually beneficial for attainment of the ozone standard. The State, in its December 21, 2000 submittal, is now demonstrating that certain regional $NO_X$ emission controls (including some controls on EGUs, major non-EGU boilers and turbines, and major cement kilns in the Northwest Indiana area) would contribute toward attainment of the ozone standard.[6] We are proposing, based on the information submitted, to revise the $NO_X$ waiver for the Northwest Indiana area, as further explained below.

### G. What Is the Time Frame for EPA To Take Action on the State Submittal?

As noted above, the EPA is providing a 30-day public comment period for this proposed rule. This comment period is typical for such proposed rules and is critical in this case given the relatively tight time constraints under which the EPA is operating. More specifically, to meet the schedule of an existing consent agreement between the EPA and the Natural Resources Defense Council, the EPA must complete final rulemaking approving the December 26, 2000 submittal by October 15, 2001 or must publish a proposed Federal Implementation Plan (FIP) for the Northwest Indiana area by that date.

### H. What Are the Basic Components of the State Submittal and What Are the Subjects Covered in This Proposed Rule?

The December 21, 2000 Indiana submittal and this proposed rule address the following topics: (1) An ozone attainment demonstration for the Chicago-Gary-Lake County ozone nonattainment area and the Grid M modeling domain; (2) the post-1999 ROP plan for the Northwest Indiana area; (3) contingency measures for the post-1999 ROP plan and for the ozone attainment demonstration; (4) ROP and attainment motor vehicle transportation conformity emission budgets; and (5) Indiana's commitments for a mid-course review of the ozone attainment demonstration. This proposed rule also addresses: (1) The status of rule adoption and implementation needed to support the ozone attainment demonstration and post-1999 ROP plan; (2) revisions to the existing $NO_X$ control waiver for the Chicago-Gary-Lake County ozone nonattainment area; and (3) a RACM analysis for the Northwest Indiana area.

In this notice, we do not respond to the public comments submitted on our December 16, 1999 proposed rule on Indiana's April 30, 1998 ozone attainment demonstration submittal. We will address those comments along with comments addressing this proposed rule when we take final action on Indiana's ozone attainment demonstration and other plan elements.

## III. Ozone Attainment Demonstration and Emissions Control Strategy

### *A. Background Information and Requirements Placed on the Ozone Attainment Demonstration*

1. What Clean Air Act Requirements Apply to the State's Ozone Attainment Demonstration?

The CAA requires the EPA to establish National Ambient Air Quality Standards (NAAQS) for certain widespread air pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare. Clean Air Act sections 108 and 109. In 1979, EPA promulgated the 1-hour ozone standard at a level of 0.12 parts per million (ppm) (120 parts per billion [ppb]). 44 FR 8202 (February 8, 1979). An area exceeds the 1-hour ozone standard each day in which an ambient air quality monitor records an 1-hour average ozone concentration above 0.124 ppm. An area violates the ozone standard if, over a consecutive 3-year period, more than 3 daily exceedances are recorded or are expected to occur at any monitor in the area or in its immediate downwind environs. The highest of the fourth-high daily peak ozone concentrations over the 3-year period at any monitoring site in the area is called the ozone design value for the area. The CAA required the EPA to designate as nonattainment any area that was violating the 1-hour ozone standard, generally based on the air quality monitoring data for the 3 year period from 1987 through 1989. Clean Air Act section 107(d)(4); 56 FR 56694 (November 6, 1991). The CAA further classified these areas, based on the areas' ozone design values, as marginal, moderate, serious, severe, or extreme. Clean Air Act section 181(a). Marginal nonattainment areas were suffering the least significant air quality problems and extreme nonattainment areas had the most significant air quality problems.

The control requirements and date by which attainment of the 1-hour ozone standard needs to be achieved vary with an area's classification. Marginal areas are subject to the fewest mandated control requirements and have the earliest ozone attainment date. Moderate, serious, severe, and extreme areas are subject to more stringent planning and control requirements but are provided more time to attain the standard. Serious nonattainment areas were required to attain the 1-hour ozone standard by November 15, 1999, and severe ozone nonattainment areas are

[5] The $NO_X$ waiver does not include an exemption from the need for the State to adopt motor vehicle $NO_X$ emission budgets for the Northwest Indiana area to support transportation and general conformity reviews. After the State has submitted and EPA has approved a motor vehicle $NO_X$ emissions budget to be used for conformity purposes, the $NO_X$ waiver is no longer applicable for transportation or general conformity as the State must consider the $NO_X$ emissions budgets when making conformity determinations.

[6] Statewide $NO_X$ emission controls on major non-EGU boilers and turbines and major cement kilns were also considered in the ozone attainment demonstration, but specific controlled $NO_X$ sources for these source categories were not identified for the Northwest Indiana area.

required to attain the ozone standard by November 15, 2005 or November 15, 2007 depending on the areas' ozone design values. The Chicago-Gary-Lake County ozone nonattainment area is classified as ''severe-17'' and its attainment date is November 15, 2007.

Under sections 182(c)(2) and 182(d) of the CAA, states with serious or severe ozone nonattainment areas were required to submit, by November 15, 1994, demonstrations of how the nonattainment areas would attain the 1-hour ozone standard and how they would achieve ROP reductions in VOC emissions of 9 percent of the base year anthropogenic emissions for each 3-year period until the attainment date (following an initial 15 percent reduction in the VOC emissions by November 15, 1996). In some cases, $NO_X$ emission reductions can be substituted for the required VOC emission reductions to achieve ROP.

2. What Is the History of the State's Ozone Attainment Demonstration and How Is It Related to EPA's $NO_X$ SIP Call?

Notwithstanding significant efforts by the states, in 1995 EPA recognized that many states in the eastern half of the United States could not meet the November 15, 1994 time frame for submitting attainment demonstration SIP revisions because emissions of $NO_X$ and VOC in upwind states (and the ozone formed by these emissions) affected these nonattainment areas and the full impact of this effect had not yet been determined. This phenomenon is called ozone transport.

On March 2, 1995, Mary D. Nichols, EPA's then Assistant Administrator for Air and Radiation, issued a memorandum to EPA's Regional Administrators acknowledging the efforts made by states but noting the remaining difficulties in making attainment demonstration SIP submittals.[7] Recognizing the problems created by ozone transport, the March 2, 1995 memorandum called for a collaborative process among the states of the eastern half of the Country to evaluate and address transport of ozone and its precursors. This memorandum led to the formation of the Ozone Transport Assessment Group (OTAG)[8] and provided for the states to submit the attainment demonstration SIPs based on the expected time frame for OTAG to complete its evaluation of ozone transport and to take into consideration the OTAG ozone modeling results.

In June 1997, OTAG completed its process. OTAG submitted to EPA the results of its technical air quality modeling efforts, which quantified the impact of the transport of ozone and its precursors. OTAG recommended consideration of a range of regional, state-wide $NO_X$ emission control measures.

In recognition of the length of the OTAG process, in a December 29, 1997 memorandum, Richard Wilson, EPA's then Acting Assistant Administrator for Air and Radiation, provided until April 1998 for states to submit the following elements of their attainment demonstration SIPs for serious and severe nonattainment areas: (a) Evidence that the applicable emission control measures in subpart 2 of part D of title I of the CAA were adopted and implemented or were on an expeditious course to being adopted and implemented; (b) lists of measures needed to meet the remaining ROP emissions reduction requirements and to reach attainment; (c) for severe areas only, a commitment to adopt and submit the emission control measures necessary for attainment and the ROP plans through the attainment year by the end of 2000[9]; (d) commitments to implement the SIP control programs in a timely manner to meet ROP emission reduction milestone targets and to achieve attainment of the ozone standard; and (e) evidence of a public hearing on each state's submittal.[10] In addition, state submissions due in April 1998, under the Wilson policy, should have also included motor vehicle emissions budgets.

Building upon the OTAG recommendations and technical analyses, in November 1997, EPA proposed action addressing the ozone transport problem. In its proposal, the EPA found that current SIPs in 22 states and the District of Columbia (23 jurisdictions) did not meet the requirements of section 110(a)(2)(D) of the CAA because they did not adequately regulate statewide $NO_X$ emissions that significantly contribute to ozone nonattainment in downwind states. 62 FR 60318 (November 7, 1997). The EPA finalized that rule in September 1998, calling on the 23 jurisdictions to revise their SIPs to require $NO_X$ emission reductions within each jurisdiction to a level consistent with a $NO_X$ emission budget identified in the final rule. 63 FR 57356 (October 27, 1998). The final rule is commonly referred to as the $NO_X$ SIP Call.

EPA completed final rulemaking on the $NO_X$ SIP Call on October 27, 1998, requiring states to address transport of $NO_X$ and ozone to other states. To address transport, the $NO_X$ SIP Call established state-specific emission budgets for $NO_X$ that the 23 jurisdictions were required to meet through enforceable SIP emission control measures adopted and submitted by September 30, 1999. The EPA did not identify specific $NO_X$ sources that the states must regulate nor did the EPA limit the states' choices regarding where within the states to achieve the emission reductions.

On May 25, 1999, the U.S. Court of Appeals for the District of Columbia issued an order staying the SIP submission requirement of the $NO_X$ SIP Call. On March 3, 2000, the Court issued a decision, which largely upheld EPA's final $NO_X$ SIP Call rule, with certain exceptions that do not affect this proposed rule. On June 23, 2000, the Court lifted the stay. Finally, August 30, 2000, the Court issued an order providing that EPA could not require SIPs to include a source control implementation date earlier than May 31, 2004.

3. What Are the Modeling Requirements for the Ozone Attainment Demonstrations?

The EPA provides that states may rely on a modeled attainment demonstration supplemented with additional evidence to demonstrate attainment of the ozone standard.[11] In order to have complete ozone modeling attainment demonstration submissions, states should have submitted the required

[7] Memorandum, ''Ozone Attainment Demonstrations,'' issued March 2, 1995. A copy of the memorandum may be found on EPA's web site at http://www.epa.gove/ttn/oarpg/t1pgm.html.

[8] Letter from Mary A. Gade, Director, State of Illinois Environmental Protection Agency, to the members of the Environmental Council of States (ECOS), dated April 13, 1995.

[9] In general, a commitment for severe areas to adopt by December 2000 the control measures necessary for attainment and ROP plans through the attainment year applies to any additional measures necessary for attainment that were not otherwise required to be submitted earlier. (This memorandum was not intended to allow states to delay submission of measures required under the Clean Air Act.) Thus, this commitment applies to any control measures or emission reductions on which any state relies for purposes of a modeled attainment demonstration.

[10] Memorandum, ''Guidance for Implementing the 1-Hour Ozone and Pre-Existing $PM_{10}$ NAAQS,'' issued December 29, 1997. A copy of this memorandum may be found on EPA's web site at http://www.epa.gov/ttn/oarpg/t1pgm.html.

[11] The EPA issued guidance on air quality modeling that is used to demonstrate attainment of the 1-hour ozone NAAQS. See U.S. EPA (1991), Guideline for Regulatory Application of the Urban Airshed Model, EPA–450/4–91–013 (July 1991). A copy may be found on EPA's web site at http://www.epa.gov/ttn/scram/(file name: ''UAMREG''). See also U.S. EPA (1996), Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, EPA–454/B–95–007 (June 1996). A copy may be found on EPA's web site at http://www.epa.gov/ttn/scram/(file name: ''O3TEST'').

modeling analyses and identified any additional evidence that EPA should consider in evaluating whether areas will attain the ozone standard.

For the purposes of demonstrating attainment of the ozone standard, the CAA (section 182(c)(2)(A)) requires states with serious and severe ozone nonattainment areas to use photochemical dispersion modeling or an analysis method EPA determines to be as effective to assess the adequacy of emission control strategies and to demonstrate attainment of the ozone standard. The photochemical dispersion modeling system is set up using observed meteorological conditions conducive to the formation of ozone. The meteorological conditions are selected based on historical data for high ozone periods in the nonattainment area or in its associated modeling domain. Emissions for a base year and monitored ozone and ozone precursor (generally VOC and $NO_X$) concentrations are used to evaluate the modeling system's ability to reproduce actual monitored air quality values (ozone and other associated pollutants). Following validation of the modeling system for the base year, ozone precursor emissions are projected to an attainment year and modeled in the photochemical modeling system to predict air quality levels in the attainment year. Projected emission changes include source emissions growth up to the attainment year and emission controls implemented by the attainment year.

A modeling domain is chosen that encompasses the ozone nonattainment area and surrounding upwind and downwind areas. Attainment of the ozone standard is demonstrated when all predicted ozone concentrations in the attainment year in the modeling domain are at or below the ozone NAAQS or at an acceptable upper limit above the NAAQS permitted under certain conditions as explained in EPA's guidance. An optional Weight-Of-Evidence (WOE) determination may be used to address uncertainty inherent in the application of photochemical grid models. See the discussion of possible WOE determination tests and analyses below.

The EPA guidance identifies the features of a modeling analysis that are essential to obtain credible results. First, the State must develop and implement a modeling protocol. The modeling protocol describes the methods and procedures to be used in conducting the modeling analyses and provides for policy oversight and technical review by individuals responsible for developing or assessing the attainment demonstration (state and local agencies, EPA regional offices, the regulated community, and public interest groups). Second, for purposes of developing the information to put into the model, the state must select historical high ozone days (days with ozone concentrations exceeding the ozone standard) that are representative of the ozone pollution problem for the nonattainment area. Third, the state needs to identify the appropriate dimensions of the area to be modeled, i.e., the modeling domain size. The modeling domain should be larger than the designated ozone nonattainment area to reduce uncertainty in the nonattainment area boundary conditions and should include any large upwind sources just outside of the ozone nonattainment area. In general, the modeling domain is considered to be the area where control measures are most beneficial to bring the nonattainment area into attainment of the ozone NAAQS. Fourth, the state needs to determine the modeling grid resolution (the modeling domain is divided into a three-dimensional grid). The horizontal and vertical resolutions in the modeling domain affect the modeled dispersion and transport of emission plumes. Artificially large grid cells (too few vertical layers and horizontal grids for a given modeled volume) may artificially dilute pollutant concentrations and may not properly consider impacts of complex terrain, meteorology, and land/water interfaces. Fifth, the state needs to generate meteorological data and emissions that describe atmospheric conditions and inputs reflective of the selected high ozone days. Finally, the state needs to verify that the modeling system is properly simulating the chemistry and atmospheric conditions through diagnostic analyses and model performance tests (generally referred to as model validation). Once these steps are satisfactorily completed, the model is ready to be used to generate air quality estimates to evaluate emission control strategies and to support an ozone attainment demonstration.

The modeled attainment test compares model-predicted 1-hour daily maximum ozone concentrations in all grid cells for the attainment year (2007 for the Chicago-Gary-Lake County ozone nonattainment area) with all selected emission control measures (emissions control strategy) in place to the level of the ozone NAAQS. A predicted peak ozone concentration above 0.124 ppm (124 ppb) indicates that the area may exceed the ozone standard in the attainment year under the tested emissions control strategy and that the emissions control strategy may be inadequate to attain the ozone standard.

EPA's guidance recommends that states use either of two modeled attainment or exceedance tests for the ozone attainment demonstration, a deterministic test or a statistical test. The deterministic test requires a state to compare predicted 1-hour daily maximum ozone concentrations for each modeling domain grid cell for each modeled day [12] to the ozone attainment level of 0.124 ppm. If none of the predictions exceed 0.124 ppm, the test is passed.

The statistical test takes into account the fact that the 1-hour ozone NAAQS allows exceedances. If, over a 3-year period, an area has an average of 1 or fewer daily exceedances per year at any monitoring site, the area is not violating the ozone standard. Thus, if the state models an extreme day, considering meteorological conditions that are very conducive to high ozone levels, the statistical test provides that a prediction of an 1-hour ozone concentration above 0.124 ppm up to a certain upper limit may be consistent with attainment of the standard.

The acceptable upper limit for modeled peak ozone concentrations in the statistical test is determined by examining the levels of ozone standard exceedances at monitoring sites which meet the 1-hour ozone NAAQS. For example, a monitoring site for which the four highest 1-hour average ozone concentrations over a 3-year period are 0.136 ppm, 0.130 ppm, 0.128 ppm, and 0.122 ppm is attaining the standard. To identify an acceptable upper limit, the statistical likelihood of observing ozone air quality exceedances of the standard of various concentrations is equated to the relative severity of the modeled day. The upper limit generally represents the maximum ozone concentration observed at a location on a single day, and would be the only ozone reading above the standard that would be expected to occur no more than an average of once a year over a 3-year period. Therefore, if the maximum ozone concentration predicted by the model is below the acceptable upper limit, in this case 0.136 ppm, then EPA might conclude that the modeled attainment test is passed. Generally, exceedances well above 0.124 ppm are very unusual at monitoring sites meeting the ozone NAAQS. Thus, these upper limits are rarely substantially higher than the attainment level of 0.124 ppm.

[12] The initial, ''ramp-up'' day for each modeled high ozone episode is excluded from this determination.

4. What Additional Analyses May Be Considered When the Ozone Modeling Fails To Show Attainment of the Ozone Standard?

When the ozone modeling does not conclusively demonstrate attainment of the ozone standard through either a deterministic test or a statistical test, additional analyses may be presented to help determine whether the area nevertheless will attain the standard. As with other predictive tools, there are inherent uncertainties in some of the photochemical modeling inputs, such as the meteorological and emissions data bases for individual days and in the methodology used to assess the severity of an exceedance at individual sites. EPA's guidance recognizes these limitations, and provides a means for considering other evidence to help assess whether attainment of the NAAQS is likely. The process by which this is done is the WOE determination.[13]

Under a WOE determination, a state can rely on and EPA will consider factors such as: Other modeled attainment tests, e.g., a rollback analysis; Other modeled outputs, e.g., changes in the predicted frequency and pervasiveness of ozone standard exceedances and predicted changes in an area's ozone design value; actual observed air quality trends; estimated emissions trends; analyses of air quality monitoring data; the responsiveness of the model predictions to further emission controls; and, whether there are additional emission control measures that are or will be approved into the SIP but that were not included in the ozone modeling analysis. This list is not an exhaustive list of factors that may be considered, and the factors considered could vary from case to case. EPA's guidance contains no limit on how close a modeled attainment test (a deterministic test or a statistical test) must be to passing to conclude that other evidence besides an attainment test is sufficiently compelling to suggest attainment. The further a modeled attainment test is from being passed, however, the more compelling the WOE determination needs to be.

EPA's 1996 modeling guidance also recognizes a need to perform a mid-course review as a means for addressing uncertainty in the modeling results, particularly if a WOE determination is needed to support an ozone attainment demonstration. Because of the uncertainty in long term projections, EPA believes a viable attainment demonstration that relies on a WOE determination needs to contain provisions for periodic review of monitoring, emissions, and modeling data to assess the extent to which refinements to emission control measures are needed. The mid-course review is further discussed below.

5. Besides the Modeled Attainment Demonstration and Adopted Emission Control Strategy, What Other Elements Must be Addressed in the Attainment Demonstration SIP?

In addition to the modeling analysis and WOE determination supporting the attainment demonstration, the EPA has identified the following key elements which must also be adopted by the state and approved by the EPA in order for EPA to approve the 1-hour ozone attainment demonstration SIPs.

a. *Clean Air Act measures, and other measures relied on in the modeled attainment demonstration.* This includes adopted and submitted rules for all Clean Air Act required measures for the specific area classification. This also includes measures that may not be required given the area's ozone classification but that the state relied on in its attainment demonstration or in its ROP plan.

The state should have adopted the emission control measures required under the CAA for the area's ozone nonattainment classification. In addition, states with severe ozone nonattainment areas had until December 2000 to adopt and submit additional emission control measures needed to achieve ROP through the attainment year and to attain the ozone standard. For purposes of fully approving a state's SIP, the state needs to adopt and submit rules for all VOC and $NO_X$ controls within the ozone modeling domain and within the state that are relied on to support the modeled ozone attainment demonstration.

Table I presents a summary of the CAA requirements that need to be met for each severe ozone nonattainment area. These requirements are specified in section 182 of the CAA. Information on more measures that states may have adopted or relied on in their current SIP submissions is not shown in the table.

TABLE I.—CAA REQUIREMENTS FOR SEVERE OZONE NONATTAINMENT AREAS

- NSR Requirements for VOC and $NO_X$, Including an Offset Ratio of 1.3:1 and a Major Source VOC and $NO_X$ Emissions Threshold of 25 Tons Per Year[14]
- RACT for VOC and $NO_X$[15]
- Enhanced Vehicle I/M
- 15 Percent VOC Control Plan for ROP Through 1996
- 3 Percent VOC/$NO_X$ Reduction Per Year Through the Ozone Standard Attainment Year—Post-1996 ROP[16]
- RACM
- Contingency Measures
- Base Year Emissions Inventory
- Stage II Gasoline Vapor Recovery At Retail Service Stations
- Reformulated Gasoline
- Measures to Offset Growth in Vehicle Miles Traveled (VMT)
- Emission Statement Rules Requiring Sources to Periodically Submit Summaries to Their VOC and $NO_X$ Emissions
- Ozone Attainment Demonstration
- Clean Fuels Fleet Program
- Enhanced Ambient Monitoring (Photochemical Assessment Monitoring System [PAM])

[13] States may choose to submit WOE determinations even when the ozone modeling results pass either the deterministic test or the statistical test. This may be done to support the attainment demonstration, recognizing that the ozone modeling results possess a certain degree of uncertainty.

[14] The $NO_X$ NSR requirements do not currently apply in the Northwest Indiana area based on a $NO_X$ waiver granted to Indiana on January 26, 1996 (61 FR 2428).

[15] The $NO_X$ RACT requirements do not currently apply in the Northwest Indiana area based on a $NO_X$ waiver granted to Indiana on January 26, 1996 (61 FR 2428).

[16] To provide interim progress, EPA accepted 9 percent VOC/$NO_X$ emission reduction plans to cover ROP requirements between 1996 and 1999. The states with severe nonattainment areas were required to meet the remainder (post-1999) of the ROP requirements through the submittal of a final ROP plan with adopted emission control regulations by December 2000. We review Indiana's post-1999 ROP plan later in this proposed rule.

b. *$NO_X$ reductions affecting boundary conditions.* Emission reductions that will be achieved through EPA's $NO_X$ SIP Call are expected by the EPA and the states to reduce the levels of ozone and ozone precursors entering ozone nonattainment areas and ozone modeling domains at their boundaries, and to reduce the $NO_X$ emissions generated within the ozone modeling domains. The ozone levels at the boundary of the local modeling domain are reflected in modeled attainment demonstrations and are, along with the concentrations of other pollutants entering the modeling domain, referred to as ''boundary conditions.'' The boundary conditions and the ozone generated and transported within the modeling domains are expected to be impacted by the $NO_X$ emission reductions resulting from the $NO_X$ SIP Call in many areas. Therefore, EPA believes it is appropriate to allow states to continue to assume the $NO_X$ emission reductions resulting from the $NO_X$ SIP Call in areas outside of the local ozone modeling domains. If states assume emission reductions other than those resulting from the $NO_X$ SIP Call within their states but outside of the ozone modeling domains, the states must also adopt emission control regulations to achieve those additional emission reductions in order to have approvable ozone attainment demonstrations. States subject to the $NO_X$ SIP Call, particularly those relying on the $NO_X$ SIP Call-based emission reductions as part of their ozone attainment demonstrations, are expected to have adopted the $NO_X$ emission control regulations needed to comply with the $NO_X$ SIP Call. In these areas, approval of the ozone attainment demonstrations is dependent on the approval of the $NO_X$ emission control regulations.

As provided above, any emission controls assumed by a state within a local ozone modeling domain must be adopted by the state and approved by us to receive our final approval of the state's 1-hour ozone attainment demonstration SIP.

c. *Motor vehicle emissions budgets.* The EPA believes that attainment demonstration and ROP SIPs must necessarily estimate the motor vehicle VOC and $NO_X$ emissions that will be produced in the attainment and milestone years and must demonstrate that these emissions, when considered with emissions from all other sources, are consistent with attainment of the ozone standard and ROP. The estimate of motor vehicle emissions is used to determine the conformity of transportation plans and programs to the SIP, as described by section 176(c)(2)(A) of the Act. For transportation conformity purposes, the estimate of motor vehicle emissions is known as the ''motor vehicle emissions budget.'' EPA believes that appropriately identified motor vehicle emissions budgets are a necessary part of attainment demonstration and ROP SIPs, and that EPA must find these budgets to be adequate before we can give final approval to the attainment demonstration and ROP SIPs.

d. *Mid-course review.* An enforceable commitment to conduct a mid-course review (MCR) and evaluation of the attainment demonstration based on air quality and emissions trends at some time prior to the attainment year must be included in the attainment demonstration SIP before it can be approved by the EPA, particularly if the SIP depends on a WOE determination to demonstrate attainment of the ozone standard. States with severe and extreme ozone nonattainment areas should also provide for a MCR because of the uncertainty inherent in emission projections that extend 10 to 15 years into the future. (See EPA's ''Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS,'' June 1996.) The MCR shows whether the adopted emission control measures and emissions control strategy (all measures combined into a single plan) are sufficient in timing and extent to reach attainment of the ozone standard by the area's attainment deadline, or whether additional emission control measures may be necessary.

A MCR is a reassessment of the modeling analyses and more recent monitoring and emissions data to determine if a prescribed emissions control strategy is resulting in emission reductions and air quality improvements needed to attain the ozone standard as expeditiously as practicable but no later than the statutory attainment date. The EPA believes that an enforceable commitment to perform a MCR is a critical element of a WOE determination.

For severe areas, such as the Chicago-Gary-Lake County ozone nonattainment area, the state(s) must submit an enforceable commitment (Indiana has submitted such a commitment as discussed below). The commitment must provide the date by which the MCR will be completed. The EPA believes that the MCR process should be done immediately following the ozone season (April through October in Indiana) in which the states have implemented the $NO_X$ regulations resulting from the $NO_X$ SIP Call and that the states should submit the results to us by the end of that calendar year. Because the Court of Appeals ordered that EPA cannot require states to establish a $NO_X$ source compliance date prior to May 31, 2004, EPA believes that the MCR should be performed following the 2004 ozone season and that the results should be submitted by the end of 2004.

Following submittal of MCR analysis results, we and the state would review the results and determine whether the state needs to adopt and submit additional emission control measures for purposes of attainment. We are not requesting that states commit now to adopt new emission control measures as a result of this process. It would be impractical for the states to make a commitment for such control measures that is specific enough to be considered enforceable. Moreover, the MCR could indicate that upwind states may need to adopt some or all of the additional emission controls needed to ensure that a downwind state/area attains the ozone standard. We would determine whether additional emission controls are needed in the state in which a nonattainment area is located or in upwind states, or in both. We would require the appropriate state(s) to adopt and submit new emission control measures within a period specified at that time. We anticipate that these findings would be made as SIP Calls under section 110(k)(5) of the CAA and, therefore, the period for the submission of the measures would be no longer than 18 months after we make a finding. A guidance document regarding the MCR process is located on EPA's web site at http://www.epa.gov/ttn/scram.

6. What Are the Relevant EPA Policy and Guidance Documents?

The relevant policy documents for ozone attainment demonstrations and their locations on EPA's web site are listed below:

a. U.S. EPA, *Guideline for Regulatory Application of the Urban Airshed Model,* EPA–450/4–91–013, (July 1991), Web site: http://www.epa.gov/ttn/scram/ (file name: ''UAMREG'').

b. U.S. EPA, *Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS,* EPA–454/B–95–007, (June 1996), Web site: http://www.epa.gov/ttn/scram/ (file name: ''O3TEST'').

c. Memorandum, ''Ozone Attainment Demonstrations,'' from Mary D. Nichols, issued March 2, 1995, Web site:http://www.epa.gov/ttn/oarpg/t1pgm.html.

d. Memorandum, ''Extension of Attainment Dates for Downwind Transport Areas,'' issued July 16, 1998,

Web site: http://www.epa.gov/ttn/oarpg/t1pgm.html.

e. Memorandum, ''Guidance for Implementing the 1-Hour Ozone and Pre-Existing $PM_{10}$ NAAQS,'' from Richard Wilson, issued December 29, 1997, Web site: http://www.epa.gov/ttn/oarpg/t1pgm.html.

f. ''Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled,'' U.S. EPA, Office of Air Quality Planning and Standards, November 1999, Web site: http://www.epa.gov/ttn/scram/.

g. ''Serious and Severe Ozone Nonattainment Areas: Information on Emissions, Control Measures Adopted or Planned and Other Available Control Measures,'' Draft Report, U.S. EPA, Ozone Policy and Strategies Group, November 3, 1999.

h. Memorandum, ''Guidance on Motor Vehicle Emissions Budgets in 1-hour Attainment Demonstrations,'' from Merrylin Zaw-Mon, Office of Mobile Sources, November 3, 1999, Web site: http://www.epa.gov/oms/transp/traqconf.htm.

i. Memorandum, ''1-Hour Ozone Attainment Demonstrations and Tier 2/Sulfur Rulemaking,'' from Lydia Wegman and Merrylin Zaw-Mon, Office of Air Quality Planning and Standards and Office of Mobile Sources, November 8, 1999, Web site: http://www.epa.gov/oms/transp/traqconf.htm.

j. Draft Memorandum, ''1-Hour Ozone NAAQS–Mid-Course Review Guidance,'' from John Seitz, Director, Office of Air Quality Planning and Standards, Web sit: http://www.epa.gov/ttn/scram/.

*B. Technical Review of the State's Submittal*

1. When Was the Attainment Demonstration Addressed in Public Hearings, and When Was the Attainment Demonstration Submitted to the EPA?

The State of Indiana held a public hearing on the ozone attainment demonstration on November 15, 2000. IDEM submitted the attainment demonstration to EPA on December 21, 2000.

2. What Are the Basic Technical Components of the Submittal?

Since Indiana, along with Illinois, Michigan, and Wisconsin, jointly participates in the Lake Michigan Air Directors Consortium (LADCO) and since LADCO has conducted the ozone analyses used to develop the ozone attainment demonstration, technical support documents developed by LADCO form the main bases for Indiana's ozone attainment demonstration. Three documents from LADCO provide much of the technical support for the attainment demonstration. These documents are:

a. ''Midwest Subregional Modeling: 1-Hour Attainment Demonstration for Lake Michigan Area—Summary,'' LADCO, September 18, 2000;

b. ''Technical Support Document—Midwest Subregional Modeling: 1-Hour Attainment Demonstration for Lake Michigan Area,'' LADCO, September 18, 2000; and

c. ''Technical Support Document—Midwest Subregional Modeling: Emissions Inventory,'' LADCO, September 27, 2000.

Indiana, like Illinois and Wisconsin, has included a state-specific cover letter and a state-specific synopsis of the ozone attainment demonstration. As part of their respective ozone attainment demonstrations, all three States included the LADCO documents listed above to support their adopted emission control strategies and ozone attainment demonstrations.

A number of other related submittal components are discussed in later sections of this proposed rule. This section deals exclusively with the technical aspects of Indiana's 1-hour ozone attainment demonstration, focusing on the ozone modeling results and supporting air quality and emissions analyses.

3. What Modeling Approach Was Used in the Analyses to Develop and Validate the Ozone Modeling System?

The LADCO States, as participants in the Lake Michigan Ozone Study (designed to establish the modeling system and its base input data and to validate the modeling system) and in the Lake Michigan Ozone Control Program (designed to select and test possible emission control strategies), used the same modeling approach to develop the basis for each State's ozone attainment demonstration, although each State selected a different emissions control strategy for their respective ozone attainment demonstration. The modeling approach is documented in LADCO's September 18, 2000 Technical Support Document (TSD) and is summarized in LADCO's September 18, 2000 modeling summary (see above).

The heart of the modeling system is the Urban Airshed Model-Version V (UAM–V) photochemical dispersion model developed originally for specific application in the Lake Michigan area. This is the same version of the model that was used during the OTAG analysis of ozone transport and ozone transport control measures.

For purposes of the local ozone attainment demonstration, UAM–V was implemented on a local modeling domain and grid configuration that was established based on consideration of areas of high ozone concentrations (generally the ozone nonattainment areas) in the Lake Michigan States and of possible upwind source areas impacting these high concentration areas. The primary modeling domain is referred to as Grid M. This grid extends east to the most eastern portion of Michigan (and to central Ohio, eastern Kentucky, and eastern Tennessee); north to the northern end of Michigan's Lower Peninsula (and to the north of Green Bay, Wisconsin); west to include the eastern thirds of Iowa and Missouri; and south to the southern border of Tennessee. The horizontal grid is rectangular in shape (see Figure 1 of the September 18, 2000 TSD). The modeling has the following horizontal and vertical resolutions:

*Horizontal Resolutions*

Approximately 12 kilometers x 12 kilometers—all modeling runs.

Approximately 4 kilometers x 4 kilometers—for selected runs to give better resolution in the area along the western shore of Lake Michigan.

*Vertical Resolution*

7 vertical layers with the following height ranges (above terrain) in meters: 0–50; 50–100; 100–250; 250–500; 500–1500; 1500–2500; and 2500–4000.

A sub-regional portion of the grid, centered (east to west) on the lower portion of Lake Michigan, was also considered to allow a more detailed analysis of the high ozone areas of Grid M. The use of Grid M and the sub-regional portion of Grid M allowed the consideration of both urban scale analyses and ozone transport. It should be noted that the modeling results from the modeling runs with the tighter 4 kilometer resolution were generally consistent with the results for the 12 kilometer resolution.

Four high ozone episodes in the Lake Michigan area were modeled. These episodes were: June 22–28, 1991; July 14–21, 1991; June 13–25, 1995; and July 7–18, 1995. These episodes were selected because: (1) They were judged to be representative of typical high ozone episodes in the Lake Michigan area and because they represent a variety of meteorological conditions that have been found to be conducive to high ozone concentrations in this area; (2) there is an intensive data base available for the 1991 episodes; and (3) several of

these episodes (the July episodes) were modeled as part of the OTAG analyses, providing ozone transport and modeling domain boundary data.

The following input data systems and analyses were used to develop input data for the ozone model:

a. Emissions. UAM–V requires a regional inventory of gridded, hourly estimates of speciated VOC, $NO_X$, and carbon monoxide (CO) emissions. The States provided emission inventories which were processed through the Emissions Modeling System-1995 version (EMS–95). Emissions were prepared for a 1996 base year (used to test model performance), a 2007 base year (considering growth and previously adopted emission control measures), and several 2007 emission control strategy/sensitivity scenarios. The emission inventories include 1996 state periodic inventory data for stationary point and area sources, updated state transportation data, excess $NO_X$ emissions produced by heavy-duty vehicles as a result of built-in ''defeat'' devices, updated growth and emissions control data, and EPA's latest emission reduction credits for the mobile source Tier II/Low Sulfur program. Temperature data affecting mobile source and evaporative emissions and biogenic emissions were generated using the RAMS3a meteorological model. Biogenic emissions were based on EPA's BEIS2 model, with an adjustment of the isoprene emissions in the Ozarks [17]. Point source emissions for some sources were addressed through the use of Plume-in-Grid (PiG) [18] techniques incorporated within UAM–V. An additional discussion of the development of the modeled emission inventories is presented below.

b. Meteorology. UAM–V requires gridded 3-dimensional hourly values of wind speed, wind direction, temperatures, air pressure, water vapor content, vertical diffusivity, and, if applicable, clouds and precipitation. Most meteorological inputs were derived through prognostic modeling with the RAMS3a model. Cloud and precipitation data were developed based on observed National Weather Service data. Preliminary analyses of the modeled meteorological data results showed adequate representation of the observed airflow features and good agreement between modeled and measured wind speeds, temperatures, and water vapor levels. LADCO, has concluded, however, that errors or uncertainties in the meteorological data may have affected the UAM–V results (albeit not significantly enough to invalidate the modeling results based on EPA recommended validation criteria). The errors have been minimized to the extent possible and suppressed through ''nudging'' using observed National Weather Service data at 12-hour intervals.

c. *Boundary Conditions.* Boundary conditions were developed by applying UAM–V over the OTAG modeling domain (this modeling domain covered most of the eastern half of the United States) for the selected high ozone episodes at a 36 kilometer grid resolution. The modeling was conducted to be consistent with the modeling used in the OTAG analyses.

Base-case modeling was conducted to evaluate model performance by comparing observed and modeled ozone concentrations. The model performance evaluation consisted of comparisons of the spatial patterns, temporal profiles, and magnitudes of modeled and measured 1-hour (and 8-hour) ozone concentrations.

In making the comparison of modeled and observed ozone concentrations, 1996 emissions were assumed to be reasonably similar to 1995 emissions, but significantly lower than 1991 emissions. To account for the 1991–1996 differences, a set of simple ''backcast'' emission factors were derived by comparing the county-level emissions in the 1991 Lake Michigan Ozone Control Program emissions inventory with the 1996 base year emissions inventory.

Peak daily 1-hour modeled ozone concentrations for each episode were analyzed and compared to the observed peak ozone levels in the modeling domain. For each type of comparison, the following conclusions were developed.

*Spatial Patterns*

This analysis showed that areas of high modeled ozone concentrations correspond acceptably with areas of high measured ozone concentrations in the Lake Michigan area. Rural (generally upwind of the Lake Michigan ozone nonattainment areas) measured and modeled ozone concentrations were found to compare favorably. Peak modeled ozone concentrations over Lake Michigan, however, appear to be underestimated on many days.

*Temporal Patterns*

Time series plots of 1-hour modeled and measured ozone concentrations by monitoring site were compared. The hour-to-hour and day-to-day variations of modeled and measured ozone concentrations were found to compare favorably. The modeling system seems to over-predict nighttime ozone concentrations and to under-predict peak daytime ozone concentrations, but performs within acceptable limits (see a discussion of the modeling validation below). At the monitoring sites with high measured ozone concentrations, the mid-afternoon modeled ozone concentrations are low.

*Magnitude Comparisons*

Ozone statistics, unpaired peak accuracy, average accuracy of peak ozone concentrations, normalized bias results, and normalized gross error results are provided in the modeling system documentation. The model performance statistics for the Lake Michigan modeling domain subregion comply with EPA's recommended acceptance ranges. The statistics of the modeling system performance, however, demonstrate the tendency of the modeling system to underestimate measured peak ozone concentrations.

*Other Factors*

The modeling system's response to changes in ozone precursor emissions has been assessed by conducting sensitivity analyses and by comparing the differences in modeled and measured ozone concentrations and changes in emissions between 1991 and 1996. This assessment indicates that the model is responsive to changes in ozone precursor emissions and is consistent with observed air quality data and emissions data.

To assess the effects of grid resolution, analyses were conducted comparing modeling results for resolutions of 4 kilometers and 12 kilometers. Plots of predicted peak concentrations were analyzed for these two grid resolutions. In general, it appears that model performance at a resolution of 4 kilometers is comparable to that at a resolution of 12 kilometers.

The LADCO States have concluded that the modeling system performance is acceptable for air quality planning purposes (for the purposes of assessing the impacts of emission control strategies).

[17] Analyses of initial ozone modeling results indicated that initial isoprene emission estimates for the Ozarks had unrealistic impacts on the ozone concentrations modeled for the Lake Michigan area. Background ozone monitoring data did not support the high background/transported ozone levels modeled to result from this upwind source area. A study, known as OZIE, was conducted to reanalyse the isoprene emissions for the Ozarks. Based on the preliminary results of the OZIE study, LADCO concluded that the isoprene emissions for the Ozarks should be reduced by a factor of 2 (halved).

[18] Sources to be addressed through PiG techniques were selected based on their magnitudes of $NO_X$ emissions (the top 100 ranked stacks) and locations (the next 34 topped ranked stacks in the Lake Michigan and St. Louis areas).

To test ozone attainment strategies, the LADCO States have projected emissions from the base year to 2007, the attainment year. The future emissions have been modified to reflect the various tested emission control strategies.[19] All other inputs to the ozone modeling system have been fixed at the levels used in the validated base year modeling analyses.

The remainder of the questions in this section of this proposed rule address the States' efforts to demonstrate attainment using the validated ozone modeling system and focuses on evaluating the attainment strategy. For additional discussions of the efforts to validate the modeling system, you are referred to the discussions of these efforts in the December 16, 1999 proposed rule (64 FR 70496).

4. How Were the 1996 Base Year Emissions Developed?

Besides being used to develop and validate the ozone modeling system, base year emissions were also used to project the attainment year emissions and, through comparisons with the attainment year emissions and analyses of monitored and modeled ozone concentrations, to support the adequacy of the selected emissions control strategy. For the purposes of the attainment demonstration used here, 1996 was selected to be the base year of the analyses.

The September 27, 2000 LADCO emission inventory TSD documents the development of the base year emissions, as well as the projection and development of the attainment year emissions used in the attainment strategy modeling and attainment demonstration. The following summarizes the development of base year emissions as documented in LADCO's September 27, 2000 TSD.

For the 1996 base year, emission rates for point and area sources were either provided by the EPA (from the $NO_X$ SIP Call documentation) or by the States based on 1996 periodic emission inventories. Where appropriate, EPA's $NO_X$ data were supplemented or corrected using state-specific data, as noted in LADCO's September 27, 2000 TSD.

Emission rates for on-road mobile sources were calculated through the use of EMS–95 based on a mobile source activity level, e.g., vehicle miles traveled (VMT), and the MOBILE5b emission factor model. The sources of the VMT, vehicle speed, and vehicle mix data are summarized in LADCO's September 27, 2000 TSD. Relative to previous emissions modeling, vehicle speeds were increased and vehicle mix distributions were shifted to heavier vehicles based on more recent data (the increased use of sports utility vehicles has increased the relative vehicle mixes of light duty gasoline trucks, increasing per VMT emissions rates). Mobile source emissions of $NO_X$ were also increased for heavy-duty diesel vehicles as the result of the use of built-in ''defeat'' devices. These increased $NO_X$ emissions were estimated by applying a processor supplied by the EPA.

Day-specific biogenic emissions were calculated using EPA's BEIS2 model. As noted above, comparisons of emission estimates and measured isoprene concentrations in the Ozarks indicated that the BEIS 2 isoprene emission estimates for the Ozarks are overestimated by a factor of 2.

As noted above, a number of refinements of the emissions estimates must be made to support the ozone modeling system. These refinements include spacial, temporal, and species processing and resolution. This was accomplished through the use of EMS–95. County-level point source emissions were spatially distributed based on facility or stack coordinates. County-level area source emissions were spatially resolved based on surrogates, such as population distributions and land use data. Mobile source emissions were calculated for each modeling grid cell by EMS–95, not requiring further resolution.

Daily average point source emissions were temporally allocated based on using facility-specific reported operating schedule information. Daily average area source emissions were temporally allocated using category-specific hourly distribution profiles. Mobile source and biogenic source emissions are directly temporally resolved through the use of EMS–95, which includes temporal emission profiles for these categories.

The speciation profiles in EMS–95 were obtained from the latest version of EPA's SPECIATE data base.

To quality assure the base year emissions data, a top-down evaluation of the emissions inventory was performed using ambient ozone precursor data collected from the Photochemical Assessment Monitoring Stations (PAMS) in the Lake Michigan area. The evaluation included comparisons of monitored and calculated VOC to $NO_X$ emissions ratios, the relative amounts of individual VOC species, and the measured and calculated reactivity of VOC compounds.

5. What Procedures and Sources of Projection Data Were Used To Project the Emissions to the Attainment Year?

The future year emission inventories used in the Lake Michigan Ozone Control Program and in the ozone attainment demonstration were derived from the base year emissions inventory. The base year emissions inventory was projected to 2007 by applying scalar growth factors for most source categories. Each LADCO State provided estimates of source growth and control factors by source sector. Source growth and emission control factors used in EPA's $NO_X$ SIP Call were also considered, particularly for EGUs. Table 1 of the LADCO September 27, 2000 TSD documents in detail the sources of 2007 emission estimates by source categories along with the sources of 1996 emissions and emission control factors and is included by reference here.

6. How Were the 1996 and 2007 Emission Estimates Quality Assured?

To improve the reliability of the modeling source emission inventories, several quality assurance activities were performed by the State emission inventory personnel, the emission modelers (those people responsible for speciating and temporally and spatially resolving the emissions data for use in the ozone modeling system), and the photochemical modelers. These activities included:

*Development and Implementation of an Emissions Quality Assurance Plan*

A standardized set of data and file checks were documented in a LADCO draft emissions quality assurance (QA) plan. This plan identifies the emissions quality assurance procedures to be followed by the State emission inventory personnel. Each State was responsible for quality assurance of its own emissions inventory data before providing these data to the LADCO emission modelers. The quality assurance of the data by the States included reviewing many EMS–95 emissions reports for consistency with other State-specific emissions data.

*Emission Reports*

EMS–95 itself performs a number of emission checks and generates reports flagging possible emission errors and

[19] For a listing of the emission control measures modeled in the various emission control strategies, see Table 6, ''Control Measures,'' in LADCO's September 27, 2000 ''Technical Support Document: Midwest Subregional Modeling: Emissions Inventory'' or Section 5, ''Strategy Modeling,'' and Table 4, ''Control Measures,'' of LADCO's September 18, 2000 ''Technical Support Document: Midwest Subregional Modeling: 1-Hour Attainment Demonstration for Lake Michigan Area,'' both of which were included in Indiana's December 21, 2000 attainment demonstration submittal.

summarizing data that can be checked against alternative emission data sets/reports. Table 7 of LADCO's September 27, 2000 TSD lists the EMS–95 standardized QA reports and is included by reference here. These reports were generated in the preparation of the Grid M emissions data and were used for QA efforts.

*Review by Photochemical Modelers*

The photochemical modelers quality assured the emissions inventories by generating and reviewing spatial plots of emissions by source sector/type. The reviews were designed to detect spatial anomalies (misplaced or missing sources). The modelers also conducted emission total checks against EMS–95 summary reports.

*Stack Parameter Checks*

A contractor, Alpine Geophysics, was employed, in part, to QA the point source emissions data. Alpine Geophysics discovered errors in the stack parameters and other point source data, including potential errors in gas exit velocities, emission rates, and physical stack parameters, for many point sources in the previous versions of the modeling system emission inventories. This review was distributed to the LADCO States to get the States to correct their respective point source emissions data.

7. What Is the Adopted Emissions Control Strategy?

To select possible emission control strategies, the LADCO States have modeled the ozone impacts of a number of emission control strategies for VOC and $NO_X$. After testing and reviewing the ozone impacts of various strategies and considering CAA-mandated emission control requirements (including the requirements of the $NO_X$ SIP Call), Indiana has adopted an emission control strategy that is consistent with LADCO Strategy Run 13 (SR 13) as the emission control strategy that will be pursued to attain the 1-hour ozone standard in the Chicago-Gary-Lake County ozone nonattainment area. Table II lists the emission controls included in SR 13.

TABLE II.—SR 13—EMISSION CONTROL STRATEGY

**VOC EMISSION CONTROLS**

Stationary Point Sources:
- RACT in Ozone Nonattainment Areas.
- NSR—Lowest Achievable Emission Rates (LAER) and Emission Offsets in Ozone Nonattainment Areas.

Non-Road Mobile and Other Area Sources:
- Federal Phase II Small Engine Standards.
- Federal Marine Engine Standards.
- Federal Heavy Duty Vehicle (≥ 50 horsepower) Standards—Phase I.
- Federal Reformulated Gasoline—Phase I and II in Mandatory Areas.
- Commercial/Consumer Solvent and Architectural Coating Emission Controls.
- Stage I and Stage II Gasoline Service Station Vapor Controls in Ozone Nonattainment Areas.
- Autobody Refinishing, Degreasing, and Dry Cleaning Emission Controls in Ozone Nonattainment Areas.

On-Road Mobile Sources:
- Federal Reformulated Gasoline—Phase I and II in Mandatory (Ozone Nonattainment) Areas.
- Basic and Enhanced Vehicle I/M in Ozone Nonattainment Areas.
- Tier 1 Light Duty Vehicle and Heavy Duty Vehicle Emission Standards.
- Clean Fuel Fleets in Serious and Above Ozone Nonattainment Areas.
- 9.0 Pounds per Square Inch (psi) Reid Vapor Pressure Gasoline Everywhere in the Ozone Modeling Domain.

**$NO_X$ EMISSION CONTROLS**

Utility Stationary Sources:
- Title IV Phase 1 and Phase 2 Acid Rain Controls.
- Prevention of Significant Deterioration (PSD) and New Source Performance Standards (NSPS) for major $NO_X$ Sources ($NO_X$ emissions ≥ 250 tons per year).
- RACT and NSR Limits in Non-waivered Ozone Nonattainment Areas.
- 0.25 Pounds $NO_X$ per Million British Thermal Units of Heat Input (0.25 Pounds $NO_X$/MMBtu) Emission Limit in Illinois, Indiana, Kentucky, and Tennessee.
- Missouri State Rule (0.25 pounds $NO_X$/MMBtu in the Eastern Third of the State and 0.35 Pounds $NO_X$/MMBtu in the Western Two-thirds of the State).
- Michigan State $NO_X$ Rule.

Non-Utility Stationary Sources:
- RACT and NSR Limits in non-waivered ozone nonattainment areas.
- PSD and NSPS for major $NO_X$ sources.
- Indiana $NO_X$ Rule for Major Non-utility Sources (60 Percent Reduction of $NO_X$ Emissions at Major Non-Utility Sources).
- Michigan $NO_X$ rule for major non-utility sources,

Non-Road and Other Area Sources:
- Federal Reformulated Gasoline—Phase I.
- Federal Phase II Small Engine Standards.
- Federal Marine Engine Standards.
- Federal Heavy Duty Vehicle Standards—Phase I.
- Federal Reformulated Gasoline—Phase II in Mandatory Areas.
- Federal Locomotive Standards, Including Rebuilds.
- High Compression Engine 4 grams Standard.

On-Road Mobiles Sources:
- Enhanced Vehicle I/M in Serious and Above Non-waivered Ozone Nonattainment Areas.
- Basic Vehicle I/M in Moderate Non-waivered Ozone Nonattainment Areas.
- Tier 1 Light Duty Vehicles and Heavy Duty Vehicle Emission Standards.
- Federal Reformulated Gasoline—Phase II in Mandatory Areas.
- Clean Fuel Fleets in Mandatory Areas.

TABLE II.—SR 13—EMISSION CONTROL STRATEGY—Continued

- National Low Emission Vehicle Program.
- Heavy Duty Vehicle 3 grams/mile Standard.

Please note that although the emissions control strategy includes certain $NO_X$ and VOC emission controls for states other than Indiana, this emissions control strategy does not obligate these other states to these emission controls. These states, however, are otherwise obligated under the CAA to achieve the emission reductions represented by this assumed emissions control strategy through mandated emission control requirements (e.g., RACT), EPA's SIP Call regulations (e.g., $NO_X$ controls in Michigan, Kentucky, and Tennessee), or as part of an attainment demonstration (e.g., $NO_X$ control measures in Wisconsin and Missouri). Thus, although each state is selecting its own emissions control strategy that may deviate from the one listed above, the ultimate emission reductions reflected by that strategy are otherwise mandated for the area and, thus, may be relied on for purposes of the Indiana attainment demonstration.

Indiana will implement emission controls consistent with the modeled emissions control strategy, including, in some instances (as discussed elsewhere in this proposed rule) emission controls with lower emission limits than modeled in the adopted emissions control strategy within Indiana itself. The status of the Indiana emission control measures is discussed below.

In the ozone modeling, the emission controls required by the CAA were assumed for all states within Grid M, and were assumed for all areas outside of Grid M in modeling used to determine the background ozone and ozone precursor concentrations for Grid M.

Indiana has developed $NO_X$ control rules to achieve a required cap on the State's $NO_X$ emissions. Indiana has adopted $NO_X$ rules for EGUs, non-EGU boilers and turbines, and cement kilns (EPA proposed to approve these rules on July 2, 2001, 66 FR 34864) consistent with EPA's $NO_X$ SIP Call. These $NO_X$ rules will achieve $NO_X$ emissions reductions in Indiana sufficient to or exceeding the $NO_X$ emissions reduction included in SR–13. Other states in Grid M have also submitted adopted or draft $NO_X$ rules to comply with the $NO_X$ SIP Call. In addition, Wisconsin and Missouri (neither are subject to the $NO_X$ SIP Call at this time) have adopted and submitted $NO_X$ EGU rules. EPA approved Missouri's $NO_X$ EGU rule on December 28, 2000 (65 FR 82285). EPA proposed to approve Illinois' $NO_X$ EGU rule on August 31, 2000 (65 FR 52967), and proposed to approve Illinois' non-EGU (major non-EGU boilers and turbines and major cement kilns) rules on June 28, 2001 (66 FR 34382).

Table III compares the VOC and $NO_X$ emission rates by major source sector in Grid M for the 1996 base year and for the adopted emission control strategy, SR 13, in 2007.

TABLE III.—COMPARISON OF 1996 AND SR 13 (2007) EMISSIONS IN GRID M

[Emissions in tons/day]

| Pollutant | Point—EGU | Point—Non-EGU | Area—offroad mobile | Area—other | Onroad—mobile | Biogenic sources | Total |
|---|---|---|---|---|---|---|---|
| VOC: | | | | | | | |
| 1996 Base Year | 32 | 2,335 | 1,716 | 4,780 | 3,633 | 30,816 | 43,312 |
| SR 13 | 37 | 1,771 | 1,167 | 4,410 | 2,671 | 30,816 | 40,872 |
| $NO_X$: | | | | | | | |
| 1996 Base Year | 5,844 | 1,876 | 2,138 | 602 | 5,681 | 2,000 | 18,141 |
| SR 13 | 3,033 | 2,047 | 1,748 | 734 | 3,359 | 2,000 | 12,921 |

Source: Table 3, ''Technical Support Document—Midwest Subregional Modeling: Emissions Inventory,'' September 27, 2000.

8. What Were the Ozone Modeling Results for the Base Period and for the Future Attainment Period With the Selected Emissions Control Strategy?

Table IV presents the Grid M peak observed and modeled ozone concentrations for the high episode days selected for the modeling analysis and attainment demonstration. The following modeled peak concentrations are presented: (a) The modeled validation peak ozone concentrations for Grid M; (b) the modeled Grid M peak ozone concentrations using the 1996 base year emissions; and (c) the 2007 predicted ozone concentrations for ozone control strategy SR 13. All modeled and monitored ozone concentrations are 1-hour averages and represent peak ozone concentrations anywhere within Grid M.

TABLE IV.—PEAK MONITORED AND MODELED OZONE CONCENTRATIONS FOR GRID M

[Ozone concentrations in ppb]

| Date | Peak ozone observed | Peak ozone modeled validation | Peak ozone modeled 1996 base year emissions | Peak ozone modeled SR 13 |
|---|---|---|---|---|
| 6–25–91 | 104 | 123 | 123 | 111 |
| 6–26–91 | 175 | 136 | 138 | 117 |
| 6–27–91 | 118 | 139 | 127 | 111 |
| 6–28–91 | 138 | 124 | 102 | 93 |
| 7–16–91 | 130 | 129 | 108 | 104 |
| 7–17–91 | 137 | 119 | 89 | 87 |

TABLE IV.—PEAK MONITORED AND MODELED OZONE CONCENTRATIONS FOR GRID M—Continued

[Ozone concentrations in ppb]

| Date | Peak ozone observed | Peak ozone modeled validation | Peak ozone modeled 1996 base year emissions | Peak ozone modeled SR 13 |
|---|---|---|---|---|
| 7–18–91 | 170 | 137 | 108 | 104 |
| 7–19–91 | 170 | 137 | 112 | 110 |
| 7–20–91 | 138 | 168 | 150 | 130 |
| 6–21–95 | 112 | 123 | 122 | 118 |
| 6–22–95 | 119 | 131 | 131 | 122 |
| 6–23–95 | 123 | 128 | 128 | 116 |
| 6–24–95 | 166 | 136 | 136 | 123 |
| 6–25–95 | 108 | 125 | 124 | 119 |
| 7–12–95 | 146 | 118 | 118 | 104 |
| 7–13–95 | 178 | 147 | 146 | 127 |
| 7–14–95 | 150 | 140 | 140 | 126 |
| 7–15–95 | 154 | 156 | 156 | 130 |

Sources: Table 6, ''Technical Support Document—Midwest Subregional Modeling: 1-Hour Attainment Demonstration for Lake Michigan Area,'' September 18, 2000.

From the above, you can see that the ozone modeling results for the selected emissions control strategy do show potential ozone standard exceedances on July 20, 1991 and July 13–15, 1995 when the projected 2007 emissions are considered in the modeling. As noted in LADCO's September 18, 2000 summary of the attainment demonstration, simple modeling and assessment of the potential future peak ozone concentrations (using projected emissions and considering possible emissions controls) (a deterministic test) does not demonstrate attainment of the ozone standard because of these modeled ozone standard exceedances. Additional analyses were conducted to support the attainment demonstration for this and other emission control strategies.

Our most relevant current ozone modeling/attainment demonstration guidance *(Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS,* EPA–454/B–95–007, June 1996) provides for a statistical test as an alternate to a deterministic test to demonstrate attainment of the ozone standard (passing a statistical test can be used to support an ozone attainment demonstration even if a deterministic test is not passed). Under a statistical test, three benchmarks must be passed.

Benchmark 1 of the statistical test requires that the number of days with modeled ozone standard exceedances in each modeling domain grid cell must be less than 3 and that any modeled ozone standard exceedances occur on a ''severe'' day (severe days are determined by ranking high ozone days over many years and considering the ranking of the days covered in the modeled ozone attainment demonstration). Ten of the days modeled by LADCO were determined to be ''severe,'' including July 20, 1991 and July 15, 1995.

Benchmark 2 of the statistical test requires that the maximum modeled ozone concentration on severe days shall not exceed 130 ppb to 160 ppb, depending on the ''severity'' of the meteorological conditions on the modeled days. For the ozone attainment demonstration addressed in this proposed rule, LADCO's analysis of the severity of the modeled days led LADCO to conclude that the peak ozone concentration limit should be 130 ppb.

Finally, benchmark 3 of the statistical test requires that the number of modeling domain grid cells with peak ozone concentrations above or equal to 125 ppb must be reduced (from the number in the modeled base period) by 80 percent on each ''severe'' day.

Indiana has determined that emissions control strategy SR 13 leads to modeled peak ozone concentrations meeting all three benchmarks of the statistical test. See LADCO's September 18, 2000 ''Technical Support Document: Midwest Subregional Modeling: 1-Hour Attainment Demonstration for Lake Michigan Area.'' Therefore, attainment of the ozone standard is demonstrated through modeling for the SR 13 emissions control strategy.

In light of the inherent uncertainties in the ozone modeling and to further support the ozone attainment demonstration, LADCO has also chosen to conduct two additional analyses that are components of a WOE analysis. First, LADCO has conducted a relative attainment test. Using the base period observed ozone design values for various ozone monitoring sites and the modeled peak ozone concentrations for the domain grid cells in the vicinities of these monitors, LADCO has predicted 2007 ozone design values for these monitoring sites (this procedure is referred to as the ''relative reduction factor'' test). For SR 13, the relative reduction factor test leads to predicted ozone design values below the ozone standard for all ozone monitoring sites considered, with the highest projected ozone design values being 124 ppb at an unmonitored mid-Lake Michigan location (a synthetic base period ozone design value was used for this site) and 124 ppb for a Michigan City, Indiana ozone monitoring site.

Second, LADCO conducted two air quality analyses to further support the ozone attainment test. An ozone trends analysis shows a considerable amount of progress toward attaining the ozone standard. Local ozone levels have significantly declined over time, while incoming ozone concentrations (transported ozone concentrations) remain relatively high. Analyses of VOC emissions show that reduced local VOC emissions is primarily responsible for the lowered local ozone concentrations. LADCO concludes that the best ozone control strategy for the lower Lake Michigan area is to control local VOC emissions (within the urban nonattainment areas) and domain-wide, regional $NO_X$ emissions (the purpose of EPA's $NO_X$ SIP Call and Indiana's adoption of $NO_X$ emission control rules for EGUs, non-EGU boilers and turbines, and cement kilns). This implied emission control approach is compatible with the emission control strategy selected by Indiana.

The WOE analyses further support the conclusions of the attainment

demonstration and counter any concerns that may be raised regarding the inherent uncertainties in the ozone modeling and the tendency of the modeling system to under-predict some peak ozone concentrations (the modeling system also over-predicts some peak ozone concentrations).

9. Do the Modeling Results Demonstrate Attainment of the Ozone Standard?

Based on LADCO's ozone modeling results, EPA believes that LADCO and, in particular, the State of Indiana have demonstrated attainment of the 1-hour ozone standard for the Chicago-Gary-Lake County ozone nonattainment area based on the adopted SR 13 emissions control strategy.

10. Does the Attainment Demonstration Depend on Future Reductions of Regional Emissions?

Yes. The adopted emissions control strategy includes regional $NO_X$ emission reductions for the State of Indiana as well as for surrounding states in compliance with EPA's $NO_X$ SIP Call. LADCO has concluded that regional $NO_X$ emissions reductions are crucial to attainment of the 1-hour ozone standard in the Lake Michigan area.

11. Has the State Adopted All of the Regulations/Rules Needed To Support the Ozone Attainment Strategy and Demonstration?

Indiana has adopted and is implementing all emission controls required under the CAA, including the emission controls contained in Indiana's 15 percent and post-1996 ROP plans.

The State of Indiana has submitted adopted $NO_X$ rules for EGUs, major non-EGU boilers and turbines, and major cement kilns. The State adopted these rules on June 6, 2001, and, as noted above, we proposed to approve these rules on July 2, 2001 (66 FR 34864). It should be noted here that the $NO_X$ rules being adopted by Indiana will provide significantly greater statewide $NO_X$ emission reductions than were assumed for the subject controlled sources in the adopted emission control strategy SR 13. Indiana is proceeding with the implementation of $NO_X$ rules to comply with EPA's $NO_X$ SIP Call, which addresses the transport of $NO_X$ and ozone. The $NO_X$ rule being implemented by Indiana for EGUs will achieve a $NO_X$ emission limit of 0.15 pounds $NO_X$/MMBtu rather than the 0.25 pounds $NO_X$/MMBtu $NO_X$ emission limit modeled for the attainment strategy. The State is also implementing $NO_X$ emission controls for major non-EGU boilers and turbines and for major cement kilns to comply with EPA's $NO_X$ SIP Call (SR 13 assumes a 60 percent $NO_X$ emission reduction from major non-EGU sources, which approximates the $NO_X$ emissions impacts of the $NO_X$ SIP Call emission control regulations to be implemented in Indiana). The additional $NO_X$ emission controls are needed to reduce $NO_X$ and ozone that are transported to other states.

*C. EPA's Evaluation of the Ozone Attainment Demonstration Portion of the State's Submittal*

1. Did the State Adequately Document the Techniques and Data Used To Derive the Modeling Input Data and Modeling Results of the Analyses?

Yes. The State's submittal thoroughly documents the techniques and data used to derive the modeling input data. The submittal adequately summarizes the modeling inputs and outputs and the conclusions drawn from the modeling outputs. Therefore, we conclude that Indiana has successfully documented the ozone modeling and that its attainment demonstration is complete from a documentation standpoint. This includes documentation of a selected emissions control strategy, which was lacking in the State's April 1998 ozone attainment demonstration submittal.

2. Did the Modeling Procedures and Input Data Used Comply With the Clean Air Act Requirements?

Yes. The State of Indiana, through LADCO, has used the UAM to model attainment of the 1-hour ozone standard. The State has documented the modeling results and the input data considered. The modeling procedures and input data comply with the requirements of the CAA as well as with EPA policy.

3. Did the State Adequately Demonstrate Attainment of the Ozone Standard?

Yes. Indiana, in accordance with EPA's December 1997 attainment demonstration guidance, has demonstrated that attainment of the 1-hour ozone standard is achievable by November 15, 2007 provided projected reductions in background ozone and ozone precursor concentrations occur as the result of the implementation of EPA's $NO_X$ SIP Call. EPA has determined that the adopted emission control strategy, including local VOC emission control measures and regional $NO_X$ emission control measures, is adequate for the attainment of the ozone standard.

4. Has Indiana Adequately Documented the Adopted Emissions Control Strategy?

Yes. The emission controls included in the adopted strategy have been identified and their cumulative emission impacts have been documented.

5. Is the Emissions Control Strategy Acceptable?

Yes. The adopted emissions control strategy relies significantly on the adoption of regional $NO_X$ emission controls by Indiana. Indiana has adopted rules to reduce $NO_X$ emissions from EGUs, major non-EGU boilers, and major cement kilns to comply with EPA's $NO_X$ SIP Call. The EPA proposed to approve these rules on July 2, 2001 (66 FR 34864). We can not approve the attainment demonstration until we have also fully approved all of the $NO_X$ emission control rules relied on in the State's ozone attainment demonstration. Assuming that we will approve Indiana's $NO_X$ rules prior to or by the time we promulgate final approval of the ozone attainment demonstration, we find the ozone attainment demonstration to be approvable.

## IV. Post-1999 Rate-of-Progress (ROP) Plan

*A. What Is a Post-1999 ROP Plan?*

Section 182(c)(2)(B) of the CAA requires states with ozone nonattainment areas classified as serious and above, including the Northwest Indiana area (which is classified as severe nonattainment for the one-hour ozone standard), to adopt and implement ROP plans to achieve periodic reductions in ozone precursors (VOC and/or $NO_X$) after 1996. The requirement is intended to ensure that an area makes definite and reasonable progress toward attainment of the ozone NAAQS. Since Indiana has already adopted and implemented a post-1996 ROP plan to meet the requirements of section 182(c)(2)(B) through November 15, 1999 (EPA approved this plan on January 26, 2000, 65 FR 4126) and since the ROP plan reviewed here addresses the ROP requirements for the period after November 15, 1999, we refer to the ROP plan reviewed in this proposed rule as the ''post-1999 ROP plan.''

The post-1999 ROP emission reductions are to occur at a rate of 9 percent of baseline emissions [20] (later

[20] ''Baseline emissions'' are defined in section 182(b)(1)(B) of the CAA as the total amount of actual VOC or $NO_X$ emissions from all anthropogenic sources in the area during calendar year 1990, excluding emissions that would be eliminated due to: (1) Any measure relating to

referred to as ''adjusted baseline emissions''), net of emissions growth, averaged over each 3-year period through the attainment year (2007 for the Chicago-Gary-Lake County ozone nonattainment area). The State must achieve the first 9 percent ROP milestone (i.e., 9 percent emission reduction, net of growth) by November 15, 2002, another 9 percent ROP milestone by November 15, 2005, and the remaining 6 percent ROP milestone by November 15, 2007.

*B. What Is the ROP Contingency Measure Requirement?*

Section 172(c)(9) of the CAA requires states with ozone nonattainment areas classified as moderate and above to adopt contingency measures by November 15, 1993. Such measures must provide for the implementation of specific emission control measures if an ozone nonattainment area fails to achieve ROP or to attain the NAAQS within the time-frames specified under the CAA. Section 182(c)(9) of the CAA requires that, in addition to the contingency measures required under section 172(c)(9), the contingency measure portion of the SIP for serious and above ozone nonattainment areas must also provide for the implementation of specific measures if an area fails to meet any applicable milestone in the CAA. As provided in these sections of the CAA, the contingency measures must take effect without further action by the state or by the EPA upon failure of the state to meet ROP emission reduction milestones or to achieve attainment of the ozone NAAQS by a required deadline.

Our policy, as provided in the April 16, 1992 ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (General Preamble) (57 FR 13498), states that the contingency measures, in total, must be able to provide for emission reductions equal to or greater than 3 percent of the 1990 baseline emissions (sufficient emission reductions to equal one year of ROP).

While all contingency measures and rules must be fully adopted by the states, states can use the contingency measures in one of two different ways. A state can choose to implement contingency measures before a milestone deadline, choosing to implement them along with ROP measures and prior to the milestone date. Alternatively, a state may decide not to implement a contingency measure until an area has actually failed to achieve a ROP or attainment milestone. In the latter situation, the contingency measure emission reduction must be achieved within one year following identification of a milestone failure by the EPA.

*C. What Indiana Counties Are Covered by the Post-1999 ROP Plan?*

The post-1999 ROP plan covers emission reduction requirements for the Northwest Indiana area (Lake and Porter Counties). The VOC emission reduction requirements, as discussed below, are determined relative to the adjusted baseline (1990) VOC emissions in this area. Section 182(c)(2)(C) of the CAA permits the State to substitute $NO_X$ emission controls to meet part of the VOC emission reduction requirements for ROP provided that the $NO_X$ emission reduction produces an ozone reduction equivalent to that achieved from the required VOC emission reduction. Indiana has not relied on $NO_X$ control substitution to achieve the ROP requirements.

*D. Who Is Affected by the Indiana Post-1999 ROP Plan?*

The post-1999 ROP plan does not itself create any new emission control requirements. Rather, it is a demonstration that existing regulations or regulations being developed to meet other emission reduction requirements are sufficient to achieve the required ROP emission reduction requirements.

The post-1999 ROP plan refers to various emission control regulations that have contributed to or will contribute to achieving the required ROP emission reductions for the 1999–2002, 2002–2005, and 2005–2007 periods in the Northwest Indiana area. These regulations, both federal and State, affect a variety of industries, businesses, and, through the vehicle I/M program and other mobile source emission reduction requirements, motor vehicle owners. Most of these regulations, however, are already federally enforceable through the approved SIP or through rules promulgated by EPA.

*E. What Criteria Must a Post-1999 ROP Plan Meet To Be Approved?*

Our January 1994 guidance document, ''Guidance on the Post-1996 Rate-Of-Progress Plan and the Attainment Demonstration,'' provides States with the appropriate methods to calculate the emission reductions needed to meet the ROP emission reduction requirements. A complete list of ROP guidance documents is provided in the direct final approval of Indiana's Post-1996 ROP Plan (65 FR 4126, January 26, 2000).

*F. What Changes Did Indiana Make to the 1990 VOC Base Year Emissions Inventory in This Submission?*

As in the post-1996 ROP plan, the State has documented a change in the 1990 base year VOC emissions in the December 21, 2000 submittal. In response to public comments regarding the post-1996 ROP plan, the State reviewed the on-road mobile source emissions. The post-1996 ROP plan had used county-wide estimates of Vehicle Miles Traveled (VMT) and vehicle speed distributions and, in the post-1996 ROP plan, the State did not disaggregate the VMT estimates by vehicle class. The new data provide information on the VMT, speed, and vehicle mix data with more resolution.

In previous ROP plans, Indiana obtained mileage data primarily from the Indiana Department of Transportation through the use of the Highway Performance Modeling System (HPMS). The detail of the mileage information was limited to broad roadway classifications, and county-specific vehicle mix data were not available.

To fulfill transportation conformity requirements, the Northwest Indiana Regional Planning Commission (NIRPC) developed a travel demand model. The information contained in the model includes the VMT distribution of the vehicles, the speeds of the vehicles, and the vehicle type mix of the vehicles on a link-by-link basis. These data produced more accurate vehicle emissions data than the county-wide inputs.

The revised 1990 mobile source emissions estimates differ significantly from those previously determined for the 1990 base year and used in the post-1996 ROP plan. The 1990 on-road mobile source VOC emission estimates for Lake and Porter Counties are being revised downward from 119,231 pounds per day (PPD) to 71,560 PPD. This results in a significant decrease in the total 1990 base year VOC emissions for Lake and Porter Counties relative to those assumed in the post-1996 ROP plan and previously approved by the EPA (65 FR 4126, January 26, 2000). Table V. compares the previously approved VOC emissions for Lake and Porter Counties with those documented in the State's post-1999 ROP plan.

motor vehicle exhaust or evaporative emissions promulgated by the EPA by January 1, 1990; and (2) any regulations concerning Reid Vapor Pressure promulgated by the EPA by November 15, 1990 or required to be promulgated under section 211(h) of the CAA.

TABLE V.—ORIGINAL AND REVISED 1990 BASE YEAR VOC EMISSIONS

[Lake and Porter Counties, Indiana]

| Source category | Previous [21] VOC emissions (pounds per day) | Revised [22] VOC emissions (pounds per day) |
|---|---|---|
| Point sources | 350,771 | 350,771 |
| Area Sources | 83,821 | 83,821 |
| On-Road Mobile Sources | 119,231 | 71,560 |
| Off-Road Mobile Sources | 23,367 | 23,367 |
| Biogenics | 42,880 | 42,880 |
| Totals | 620,070 | [23] 572,399 |

[21] Source: 65 FR 4131, January 26, 2000—table titled ''Total VOC Emissions'' coupled with Table 3.1 (''1990 Lake and Porter Total VOC Emissions'') in ''Post-1999 Rate of Progress Plans: Northwest Indiana Severe Ozone Nonattainment Area: Lake and Porter Counties, Indiana,'' December 21, 2000 State of Indiana submittal, Appendix F. Assume all source category emissions in Table 3.1 are unchanged from previously approved levels except on-road mobile source emissions, as documented by the State in the December 21, 2000 submittal.

[22] Emissions taken directly from Table 3.1 of ''Post-1999 Rate of Progress Plans: Northwest Indiana Severe Ozone Nonattainment Area: Lake and Porter Counties, Indiana,'' December 21, 2000 State of Indiana submittal, Appendix F.

[23] Note that the total VOC emissions given here differs slightly from the total specified by IDEM. IDEM documented a total VOC emissions of 572,398 pounds per day (PPD). The total given here is mathematically correct given the available data. The difference between this total (572,399 PPD) and that documented by IDEM is probably due to rounding differences. It is assumed that IDEM maintained data in fractional PPD, whereas we are working with emissions, as documented, in non-fractional PPD, leading to the rounding differences. We are proposing to approve the revision of the 1990 base year VOC emissions as summarized by the State.

IDEM has concluded that the 1990 base year emissions were actually significantly lower than those used in the post-1996 ROP, and has requested that the 1990 SIP base year inventory be adjusted accordingly. The calculation of emission reduction requirements for the post-1999 ROP plan are based on the revised VOC emissions. IDEM has noted in the December 21, 2000 submittal that this revision in base year emissions results in the need for revisions in the prior (1996 and 1999) ROP target emission levels.

*G. Why Were the 1996 15-Percent ROP Target Level and the 1999 9-Percent ROP Target Level for Lake and Porter Counties Recalculated, and Does Indiana Have To Revise the Prior ROP Plans?*

The 15 percent ROP emission target level (1996 milestone year) and the post-1996 ROP emission target level (1999 milestone year) had to be recalculated because IDEM has revised the 1990 base year VOC emissions inventory and because these emission target levels are input data for the calculation of subsequent ROP emission target levels. Each succeeding ROP milestone emission target level incorporates the preceding milestone year emission target level. Changing the base year emissions results in the need for a cascading calculation of milestone year emission target levels.

The need for new calculated emission target levels does not necessitate revisions of prior ROP plans. Since subsequent milestone year emission target levels incorporate recalculations of preceding emission target levels, any shortfall in emission reductions resulting from the revisions in emission estimates is eliminated by appropriately adjusting the milestone year emission targets for years following the year of the revised emission estimates. For example, if the base year (1990) VOC emission estimates are lowered, as is the case here, subsequent milestone year emission target levels, those for 1996, 1999, 2002, 2005, and 2007, should be appropriately lowered.

*H. How Were the 1996 and 1999 Target Emission Levels for Lake and Porter Counties Calculated?*

IDEM calculated the 1996 and 1999 emission target levels, and presented these data in electronic spreadsheet tables to support the post-1999 ROP plan (we are including in the docket for this proposed rule hard copies of the spreadsheet data tables). We present in Tables VIa and VIb the State's calculations of the 1996 and 1999 VOC emission target levels using data supplied in the State's post-1999 ROP plan and supporting spreadsheets with one correction as noted below. The formula in brackets, [], in the following tables (and in other tables in this section of the proposed rule) show how emission values are calculated from other parameters within the same tables.

Note that we have included in Table VIb one factor that Indiana did not include in its calculations. This factor is the ''fleet turnover correction factor.'' This factor, as discussed in our January 1994 ''Guidance on the Post-1996 Rate-Of-Progress Plan and the Attainment Demonstration'' (EPA–452/R–93–015), is needed to account for non-creditable mobile source emission reductions occurring between milestone years as a result of the Federal Motor Vehicle Emission Control Program (FMVCP). IDEM, in making its ROP calculations, has assumed that this correction factor is accounted for in the FMVCP emission reduction used to calculate the ROP emission reduction requirement for each milestone period, and that a separate fleet turnover correction factor is not needed to account for non-creditable emission reductions. However, based on section 182(b)(1)(D) of the CAA and our January 1994 post-1996 ROP guidance, we believe that this assumption is incorrect. Our calculated ROP emission target levels and required total emission reduction requirements presented here account for the fleet turnover correction factors for each milestone year following 1996. This difference in approach (between IDEM and EPA) with regard to this correction factor accounts for the differences between our ROP estimates and those of IDEM as reflected in the subsequent tables and discussion.

TABLE VIA.—RECALCULATED 1996 VOC EMISSION TARGET LEVEL FOR LAKE AND PORTER COUNTIES

| VOC emissions parameter | VOC emissions (pounds per day) |
|---|---|
| 1990 Total VOC Emissions | 572,398 |
| 1990 ROP Baseline Emissions ($^{A}$) | 529,518 |
| 1990–1996 Non-Creditable Emission Reductions ($^{B}$) | 158,586 |
| 1990 Adjusted Base Year Emissions ($^{C}$) [($^{A}$) – ($^{B}$)] | 370,932 |

TABLE VIA.—RECALCULATED 1996 VOC EMISSION TARGET LEVEL FOR LAKE AND PORTER COUNTIES

| VOC emissions parameter | VOC emissions (pounds per day) |
|---|---|
| 15 Percent of Adjusted Base Year Emissions (D) | 55,640 |
| 1996 Target Emissions Level [(C) – (D)] | 315,292 |

(A) Total VOC Emissions minus Biogenic Emissions (42,880 PPD).
(B) Non-Creditable Emission Reductions include: Coke Oven By-Product Recovery Emission Reduction = 130,169 PPD; Federal Motor Vehicle Control Program = 27,689 PPD (these emission reductions were taken from the spreadsheet data submitted to support the post-1999 ROP plan); and Reid Vapor Pressure (RVP) Restrictions = 728 PPD.

TABLE VIB.—RECALCULATED 1999 EMISSION TARGET LEVEL FOR LAKE AND PORTER COUNTIES

| VOC emission parameter | VOC emissions (pounds per day) |
|---|---|
| 1990 ROP Baseline Emissions (A) | 529,518 |
| 1990–1999 Non-Creditable Emission Reductions (B) | 193,337 |
| 1990 Adjusted Base Year Emissions (C) [(A) – (B)] | 336,181 |
| 9 Percent of Adjusted Base Year Emissions (D) | 30,256 |
| Fleet Turnover Correction (E) | 4,865 |
| 1996 Target Emissions Level (F) | 315,292 |
| 1999 Target Emissions Level [(F) – (D) – (E)] | 280,171 |

(A) From Table VIa above.
(B) Non-Creditable Emission Reductions include: Coke Oven By-Product Recovery Emission Reduction = 160,055 PPD; Federal Motor Vehicle Control Program = 32,554 PPD (these emission reductions were taken from the spreadsheet data submitted by IDEM to support the post-1999 ROP plan); and Reid Vapor Pressure (RVP) Restrictions = 728 PPD.
(E) This is the difference between the 1996 and 1999 FMVCP emission reductions. Note that IDEM does not include this factor in their calculation of the 1999 target emission level.
(F) From Table VIa above.

Comparing the State's derived 1999 VOC emissions target level (285,036 PPD) and the 1999 VOC target emissions level given in Table VIb, it can be seen that IDEM and EPA do not arrive at the same 1999 emissions target level. As noted above, this difference is due to our inclusion of a fleet turnover correction factor in the calculation of the 1999 target emissions level. This difference is reflected in the calculation of 2002, 2005, and 2007 VOC emission target levels summarized below, where we compare Indiana's calculation of emission reduction targets and required emission reduction levels with our calculation of the emission reduction targets and required emission reduction levels.

*I. How Were the Post-1999 Emission Targets and Emission Reduction Requirements Calculated?*

Tables VIIa, VIIb, and VIIc summarize the calculation of the 2002, 2005, and 2007 VOC emission reduction targets and the VOC emission reductions required to meet ROP requirements in each of these milestone years. Both the State's calculations and our calculations are presented. We present our calculations in a side-by-side comparison to facilitate assessment of the State's ROP plan.

TABLE VIIA.—CALCULATION OF THE 2002 VOC EMISSION REDUCTION TARGET AND EMISSION REDUCTION REQUIREMENT

[VOC emissions in pounds per day]

| VOC emission parameter | Indiana emissions estimate | EPA emissions estimate |
|---|---|---|
| 1990 ROP Baseline Emissions (A) | 529,518 | 529,518 |
| 1990–2002 Non-Creditable Emission Reductions (B) | 176,950 | 176,950 |
| 1990 Adjusted Base Year Emissions (A) – (B) | 352,568 | 352,5689 |
| Percent of Adjusted Base Year Emissions (C) | 31,731 | 31,731 |
| FMVCP Fleet Turnover Correction (D) | 0 | 8,585 |
| 1999 Emissions Target Level (E) | 285,036 | 280,171 |
| 2002 Emissions Target Level (F) [(E) – (C) – (D)] | 253,305 | 239,855 |
| Projected 2002 Emissions (G) | 248,413 | 248,413 |
| VOC Emission Reduction Needed to Achieve ROP (H) [(G) – (F)] | (4,892) | 8,558 |

(A) From Table VIa.
(B) Non-Creditable Emission Reductions include: Coke Oven By-Product Recovery Emission Reduction = 135,083 PPD; Federal Motor Vehicle Control Program = 41,139 PPD; and Reid Vapor Pressure (RVP) Restrictions = 728 PPD. All data taken from Appendix F of Indiana's December 21, 2000 submittal.
(D) This is the difference between the 1999 and 2002 FMVCP emission reductions.
(E) The State's estimate is taken from Appendix F of the December 21, 2000 submittal. EPA's estimate is taken from Table VIb of this proposed rule.
(G) From Appendix F of the State's December 21, 2000 submittal.
(H) Emissions in parentheses, (), indicate projected emissions below the ROP emission target levels.

TABLE VIIB.—CALCULATION OF THE 2005 VOC EMISSION REDUCTION TARGET AND EMISSION REDUCTION REQUIREMENT

[VOC emissions in pounds per day]

| VOC emission parameter | Indiana emissions estimate | EPA emissions estimate |
|---|---|---|
| 1990 ROP Baseline Emissions (A) | 529,518 | 529,518 |
| 1990–2005 Non-Creditable Emission Reductions (B) | 179,980 | 179,980 |
| 1990 Adjusted Base Year Emissions (A – B) | 349,538 | 349,538 |
| 9 Percent of Adjusted Base Year Emissions (C) | 31,458 | 31,458 |
| FMVCP Fleet Turnover Correction (D) | 0 | 1,653 |
| 2002 Emissions Target Level (E) | 253,305 | 239,855 |
| 2005 Emissions Target Level (F) [E – C – D] | (I) 221,846 | 206,744 |

TABLE VIIB.—CALCULATION OF THE 2005 VOC EMISSION REDUCTION TARGET AND EMISSION REDUCTION REQUIREMENT—Continued

[VOC emissions in pounds per day]

| VOC emission parameter | Indiana emissions estimate | EPA emissions estimate |
|---|---|---|
| Projected 2002 Emissions (G) | 203,508 | 203,508 |
| VOC Emission Reduction Needed to Achieve ROP (H) [G – F] | (18,338) | (3,236) |

(A) From Table VIa.
(B) Non-Creditable Emission Reductions include: Coke Oven By-Product Recovery Emission Reduction = 136,460 PPD; Federal Motor Vehicle Control Program = 42,792 PPD; and Reid Vapor Pressure Restrictions = 728 PPD. All data taken from Appendix F of Indiana's December 21, 2000 submittal.
(D) This is the difference between the 2002 and 2005 FMVCP emission reductions.
(E) The State's estimate is taken from Appendix F of the December 21, 2000 submittal. EPA's estimate is taken from Table VIIa of this proposed rule.
(G) From Appendix F of the State's December 21, 2000 submittal.
(H) Values in parentheses, (), indicate projected emissions below the ROP emissions target levels.
(I) This value is taken from Appendix F of the State's December 21, 2000 submittal. The value we would calculate given the input data documented here would be 221,847 PPD, slightly different from the State's documented value. Rounding differences can explain this small difference.

TABLE VIIC.—CALCULATION OF THE 2007 VOC EMISSION REDUCTION TARGET AND EMISSION REDUCTION REQUIREMENT

[VOC emissions in pounds per day]

| VOC emission parameter | Indiana emissions estimate | EPA emissions estimate |
|---|---|---|
| 1990 ROP Baseline Emissions (A) | 529,518 | 529,518 |
| 1990–2007 Non-Creditable Emission Reductions (B) | 181,015 | 181,015 |
| 1990 Adjusted Base Year Emissions (A) – (B) | 348,503 | 348,503 |
| 6 Percent of Adjusted Base Year Emissions (C) | 20,910 | 20,910 |
| FMVCP Fleet Turnover Correction (D) | 0 | 117 |
| 2005 Emissions Target Level (E) | 221,846 | 206,744 |
| 2007 Emissions Target Level (F) [(E) – (C) – (D)] | 200,936 | 185,717 |
| Projected 2007 Emissions (G) | 197,759 | 197,759 |
| VOC Emission Reduction Needed to Achieve ROP (H) [(G) – (F)] | (3,177) | 12,042 |

(A) From Table VIa.
(B) Non-Creditable Emission Reductions include: Coke Oven By-Product Recovery Emission Reduction = 137,378 PPD; Federal Motor Vehicle Control Program = 42,909 PPD; and Reid Vapor Pressure Restrictions = 728 PPD. All data taken from Appendix F of Indiana's December 21, 2000 submittal.
(D) This is the difference between the 2005 and 2007 FMVCP emission reductions.
(E) The State's estimate is taken from Appendix F of the December 21, 2000 submittal. EPA's estimate is taken from Table VIIb of this proposed rule.
(G) From Appendix F of the State's December 21, 2000 submittal.
(H) Emissions in parentheses, (), indicate projected emissions below the emissions target level.

The data in Tables VIIa through VIIc indicate that the State and EPA arrive at different emission target levels and different ROP emission reduction requirements. This is due to one factor, the difference in the approaches of IDEM and EPA with regard to the consideration of a fleet turnover correction factor. We believe that this correction factor is needed to fully remove the non-creditable impacts of the FMVCP as required by section 182(b)(1)(D) of the CAA. Application of the FMVCP fleet turnover correction factor, as noted above, is discussed in EPA's January 1994 ''Guidance on the Post-1996 Rate-Of-Progress Plan and the Attainment Demonstration'' (EPA–452/R–93–015). As indicated below, however, EPA has determined that the differences between IDEM's and EPA's approaches to the consideration of this correction factor does not cause sufficient differences in our ROP calculations to cause us to propose disapproval of Indiana's post-1999 ROP plan. Even when the fleet turnover correction factor is considered, Indiana's plan provides for sufficient VOC emission reductions to achieve the required ROP through the attainment year.

*J. What Are the Criteria for Acceptable ROP Emission Control Strategies?*

Under section 182(b)(1)(C) of the CAA, emission reductions claimed for ROP are creditable to the extent that the emission reductions have actually occurred before the applicable ROP milestone dates. The CAA requires that to be creditable, emission reductions must be real, permanent, and enforceable. At a minimum, the emission reduction calculation methods should follow the following four principles: (1) Emission reductions from control measures must be quantifiable; (2) control measures must be enforceable; (3) interpretation of the control measures must be replicable; and (4) control measures must be accountable (see 57 FR 13567). Post-1996 plans must also adequately document the methods used to calculate the emission reduction for each emission control measure.

Section 182(b)(1)(D) of the CAA places limits on what emission control measures states can include in ROP plans. All permanent and enforceable control measures occurring after 1990 are creditable with the following exceptions: (1) FMVCP reductions due to requirements promulgated by January 1, 1990; (2) RVP reductions due to RVP regulations promulgated by November 15, 1990; (3) emission reductions resulting from Reasonably Available Control Technology (RACT) ''Fix-Up'' regulations required under section 182(a)(2)(A) of the CAA; and (4) emission reductions resulting from vehicle I/M program ''Fix-Ups'' as

required under section 182(a)(2)(B) of the CAA.

*K. What Are the Emission Control Measures In Indiana's Post-1999 ROP Plan?*

VOC Emission Control Measures

Table VIII specifies the VOC emission control measures relied on in the post-1999 ROP plan and their associated VOC emission reductions for each milestone year as calculated by IDEM.

TABLE VIII.—NORTHWEST INDIANA VOC EMISSION REDUCTION MEASURES

[Emission reductions in pounds per day]

| VOC control measure | Emission reduction level—PPD | | |
|---|---|---|---|
| | 2002 | 2005 | 2007 |
| Mobile Source Measures: | | | |
| Federal Non-Road Engine Standards | 1,711 | 3,477 | 2,394 |
| Point Source Measures: | | | |
| Petroleum Refineries National Emission Standard for Hazardous Air Pollutants (NESHAP) | | | 5,198 |
| Sinter Plant Rule (State Rule 326 IAC 8–13) | 37,920 | | |
| US Steel Agreed Order—Supplementary Environmental Project | | | 905 |
| Volatile Organic Liquid Storage RACT (State Rule 326 IAC 8–9) | | | 2,653 |
| Cold Cleaner Degreasing (State Rule 326 IAC 8–3) | | | [24] 4,769 |
| Area Source Measures: | | | |
| Municipal Solid Waste Landfill (State Rules 326 IAC 8–8 and 326 IAC 8–8.1) | 1,365 | | |
| Commercial/Consumer Solvent Reformulation | | | 2,210 |
| Total Creditable VOC Emission Reductions | 40,996 | 3,477 | [25] 18,129 |

[24] See the discussions below concerning EPA's calculation of the VOC emission reduction for the Cold Cleaning Degreasing rule. EPA calculates a VOC emission reduction of 3,661 pounds/day for this source category.

[25] With EPA's correction to the emission reduction estimate for Cold Cleaning Degreasing, this total VOC emission reduction estimate would be decreased to 17,021 pounds/day.

The following summarizes the emission controls and the associated emission reduction calculation procedures documented in Indiana's Post-1999 ROP Plan. In most cases, milestone year emission reductions were determined by comparing projected uncontrolled emissions with projected controlled emissions for each controlled source category.

*Federal Non-Road Engine Standards*

These standards are federally required for all small non-road, spark-ignited engines, including 2-stroke, 4-stroke, and diesel engines. Indiana calculated emission reductions according to EPA guidance. The calculated emission reductions consider the impacts of fuel standards as well as the federal emission standards. To calculate the emission reduction, Indiana used EPA guidance to apply a percentage emission reduction per equipment type. The emission control is cumulative, providing additional emission reduction each milestone period as older equipment is replaced by new, compliant equipment.

*Sinter Plant Rule*

This rule (326 IAC 8–13) applies to sintering processes that exist as of the effective date of the rule at integrated and steel manufacturing facilities in Lake and Porter Counties. The rule sets an emission limit of 0.12 pounds VOC per ton of sinter produced during the summer months (May through September), unless a source owner or manager can demonstrate that this level of emissions control is not reasonably available. If it is determined that this emission level is infeasible for a particular source, then a VOC emission level resulting from the product of 0.25 pounds VOC per ton of sinter and a daily production rate must be achieved. The production rate must be based on the 1990 through 1994 average production rate or on an alternative, more representative production rate. The emission limit for the rest of the year (October through April) has been set at 0.36 pounds VOC per ton of sinter.

The calculated emission reduction level was based on the less stringent of the control options. The calculated emission reduction also reflects the fact that a limit on production is instituted when the higher emissions limit is approved by the State. This provides a cap on throughput.

The Sinter Plant Rule was approved by the EPA on July 5, 2000 (65 FR 41350).

*Municipal Solid Waste Landfill*

This rule (326 IAC 8–8) is based on the federal New Source Performance Standards for new and existing municipal solid waste landfills with a design capacity equal to or greater than 2.5 million megagrams and that emit equal to or more than 50 megagrams per year (55 tons per year) of non-methane organic compounds. The State rule also applies to new and existing solid waste landfills with design capacities greater than or equal to 100,000 megagrams of solid waste and that emit more than 50 megagrams per year (55 tons per year) of non-methane organic compounds.

Indiana calculated the emission reduction based on an emission destruction efficiency of 98 percent and a collection efficiency ranging from 50 to 60 percent, yielding an overall VOC emission control efficiency of 49 to 59 percent. A rule effectiveness factor of 80 percent is also used in the calculation of the emission reduction level.

EPA approved this rule on March 28, 2000 (65 FR 16323).

*Commercial/Consumer Solvent Reformulation*

This is a federal rule (''National Volatile Organic Compound Emission Standards for Consumer Products,'' 40 CFR part 59, subpart C). The VOC emission reduction was calculated using available EPA guidance. The total emission reduction was calculated by assuming emission reduction levels for each of several controlled product categories and for each consumer production classification in Indiana's Area Source Inventory.

*Petroleum Refineries NESHAP*

The federal petroleum refineries NESHAP (40 CFR part 63, subpart CC) applies to all existing and new petroleum refineries. The rule requires control of air toxics (including some VOC) from miscellaneous process vents, equipment leaks, storage vessels, and wastewater collection and treatment systems.

Indiana calculated the emission reductions according to EPA guidance. Indiana's Post-1999 ROP Plan documents the assumptions made for each controlled petroleum refinery source type.

*U.S. Steel Agreed Order—Supplementary Environmental Project*

Under a March 22, 1996 agreed order between Indiana and U.S. Steel, VOC controls are to be achieved through a supplementary environmental project to be performed by U.S. Steel for the coke quenching operations at the Gary Works. (The supplementary environmental project is specified in section 3 (''Clean Water Coke Quench Project'') of Exhibit E in the March 22, 1996 agreed order.) Based on this supplemental environmental project portion of the agreed order, U.S. Steel established a new process water treatment plant at the Gary Works coke plant. This water treatment plant uses a biotreatment process based on an innovative Integral Activated Sludge System comprised of two 2.14 million gallon tanks operated in parallel, each containing an anoxic zone, aerobic zone, and an integral clarifier system. The water treatment plant uses oil/tar separation tanks, skimmers, equalization tanks, and an ammonia still to treat the water before it is sent to the Integral Activated Sludge System and on to the quenching system. The removal of the oils, tars, and ammonia will remove nearly all of the VOC found in the pre-treated water, minimizing the VOC release from coke quenching, reducing the VOC emissions by an estimated 905 pounds/day. This is just one of the supplementary projects being performed by U.S. Steel to fulfill the requirements of the agreed order.

IDEM submitted the agreed order to the EPA to support the ozone attainment demonstration. We are proposing to incorporate section 3 (''Clean Water Coke Quench Project'') of Exhibit E of this agreed order into the SIP, making it federally enforceable. We are not proposing to take action on other portions of the agreed order for the purposes of this proposed rule.

Volatile Organic Liquid Storage RACT

The State adopted this rule (326 IAC 8–9) on May 3, 1995. Compliance was phased in, with the majority of the requirements applicable by May 1, 1999. The rule applies to storage vessels with a capacity greater than 39,000 gallons that are used to store volatile organic liquids with a maximum true vapor pressure of 1.52 pounds per square inch or greater. The rule requires the use of an internal floating roof with vapor-mounted primary and secondary seals and controlled fittings on fixed roof and internal floating roof tanks. For external floating roof tanks, the rule requires the replacement of vapor-mounted seals with liquid mounted seals or shoes and installation of secondary seals with controlled fittings. The compliance date for this rule for external floating roof and fixed roof tanks was May 1, 1996. Internal floating roof tanks had up until 10 years after this date to achieve compliance with this rule. IDEM estimates that this rule will result in a VOC emissions reduction of 2,653 pounds/day by 2007.

The following information was taken into consideration to calculate the VOC emission reduction for this rule. The VOC emission reduction for fixed roof tanks is estimated to be 96 percent. For internal floating roof tanks, the VOC emission reduction is expected to be 29 percent. The expected VOC emission reduction for external floating roof tanks is unknown because no data is available that can be used to determine the number of tanks in each vapor pressure range by seal type, but a 50 to 80 percent VOC emission reduction could be expected depending on the capacity and baseline control status of the tanks. The State assumed a 50 percent emission reduction coupled with an 80 percent rule effectiveness (assumed rule effectiveness for all tank types).

EPA approved the Volatile Organic Liquid Storage RACT Rule on January 17, 1997 (62 FR 2593).

Cold Cleaner Degreasing

The State adopted this rule (326 IAC 8–3–8) in November 1998. Compliance was phased in, with the majority of the requirements applicable by March 2001. This rule applies to processes that use a solvent to remove grease, oil, or dirt from the surface of a part prior to surface coating or welding. In cold cleaning, a part to be cleaned is dipped into or sprayed with a solvent. Sources that commonly have cold cleaning degreasing units include auto repair shops and other industries. The rule reduces the VOC emissions from cold cleaning degreasers by establishing a vapor pressure limit for the solvents. Suppliers are required to provide a low vapor pressure solvent to users in the affected counties and to keep transaction records. Users are required to use only low vapor solvents and to keep records of their solvent purchases.

IDEM estimates that this rule results in a 67 percent reduction of VOC emissions for this source category. IDEM's documentation calculates that this rule provides for a VOC emission reduction of 4,769 pounds/day in the Northwest Indiana area.[26] EPA, however, is only crediting Indiana with a VOC emission reduction of 3,661 pounds/day. This calculation revision is based on the fact that perchloroethylene (perc), which is a solvent used in some cold cleaner degreasing units, has been determined to be negligibly reactive, and, therefore, delisted as a VOC. Pursuant to a May 13, 1993 memorandum from the EPA's Office of Air Quality Planning and Standards to EPA's Regional Branch Chiefs on ''Perchloroethylene Emissions from Degreasing,'' perc makes up 23 percent of the solvent used in degreasing operations. The projected 2007 VOC emissions from cold cleaning degreaser operations is 7,097 pounds/day. To account for the adjustment to remove the perc emissions, this emissions level is decreased to 5,465 pounds/day (a 23 percent reduction from the 7,097 pounds/day emissions level). The 67 percent emissions reduction due to the Cold Cleaner Degreaser rule is then calculated to be 3,661 pounds/day.

The EPA proposed to approve this rule on June 7, 2001 (66 FR 30656). Final action on this rule must be completed before the EPA takes final action on the State's ROP plan.

*L. Are the Emission Control Measures and Calculated Emission Reductions Acceptable to the EPA?*

We find the estimated emission reduction estimates to be acceptable for all reduction categories. The emission reduction estimates have been adequately documented. Finally, the emission reduction estimates are supported by State rules, which will be fully approved before we give final approval to the ROP plan, a State agreed order, which we are proposing to incorporate by reference into the SIP making it federally enforceable, and by federal emission control requirements.

[26] Indiana based this emission reduction estimate on EPA guidance existing as of 1990. EPA's estimate presented here is based on subsequent guidance.

*M. Are the Planned Emissions Reductions Adequate To Meet the ROP Emission Reduction Requirements, Including ROP Contingency Measure Requirements?*

The State, in Appendix F of the December 21, 2000 submittal, documents that the VOC emissions reductions resulting from the selected ROP emission control measures will be sufficient to meet the ROP emission reduction requirements for 2002, 2005, and 2007, including meeting the contingency requirements [27] for each milestone year.

As noted above, we have calculated ROP emissions reduction requirements differing from those calculated by IDEM. The question is now whether the emission reductions planned by Indiana are sufficient to meet the emission reduction requirements we have calculated. Table IX presents a comparison of our calculated emission reduction requirements and the emission reductions expected to occur in each ROP milestone period (during each 3 year period between milestone years) or by each milestone year. In this table, we have also included the VOC emission reductions needed to meet the contingency requirement to test whether Indiana's ROP plan would actually meet the contingency requirement through the implementation of emission controls prior to each milestone year.

TABLE IX.—COMPARISON OF PLANNED VOC EMISSION REDUCTIONS AND ROP AND CONTINGENCY MEASURE EMISSION REDUCTION REQUIREMENTS (AS DETERMINED BY EPA) FOR LAKE AND PORTER COUNTIES

[VOC emissions in pounds per day]

| Milestone year | ROP required VOC emission reduction | Contingency emission reduction needed [28] | Total creditable emission reductions [29] | Emission reduction shortfall ([A]) |
|---|---|---|---|---|
| 2002 | 8,558 | 10,577 | 40,996 | (21,861) |
| 2005 | (3,236) | 10,486 | 3,477 | (28,665) |
| 2007 | 12,042 | 10,455 | 17,021 | (33,675) |

([A]) Values in parentheses, (), indicate that the creditable emission reductions exceed the sum of the ROP required VOC emission reduction and the contingency emission reduction needed for a given milestone year. Excess emission reductions are credited against emission reduction requirements for succeeding milestone years.

From Table IX, you can see that the Northwest Indiana area will have sufficient VOC emission reductions to achieve the ROP emission reduction requirements for each of the milestone years. In addition, by each milestone year, sufficient VOC emission reductions will be achieved to provide for the 3 percent contingency emission reduction needs. Therefore, the ROP plan meets the calculated emission requirements of both the State and EPA. The ROP plan provides sufficient VOC emission reductions to meet all ROP requirements.

*N. How Does the ROP Plan Affect Outstanding Plan Requirements for Contingency Measures on the 15-Percent ROP Plan and the Post-1996 9-Percent ROP Plan?*

As noted in the final rulemaking for 15 percent ROP plan (62 FR 38457, July 18, 1997) and the final rulemaking for the post-1996 ROP plan (65 FR 4126, January 26, 2000), the EPA did not approve the contingency plans related to those ROP plans. Technically, the State is still obligated to meet these planning requirements or to demonstrate the adequacy of the 15 percent ROP plan and the post-1996 ROP plan for meeting the 1996 and 1999 emission targets (274,553 PPD [1996] and 292,021 PPD [1999] as defined in the final rules, versus 309,993 PPD [1996] and 275,798 [1999] based on the revised 1990 base year emissions, as discussed above).

The contingency plans for the 1996 and 1999 milestone years would have to have provided for contingency measures yielding a total VOC emission reduction with a maximum of 10,940 PPD. Table IX shows that the VOC emission reductions expected to result from the current ROP plan exceed the current ROP requirements by an amount greater than this maximum contingency requirement. The current ROP plan is adequate to also cover these prior contingency requirements. We, therefore, conclude that this ROP plan meets all outstanding contingency plan requirements, and that the State has met all contingency planning requirements through the current time. It is not necessary for the State to revisit the contingency plans for the 15 percent ROP plan and the post-1996 ROP plan. We propose to approve those contingency plans as effectively being met by the current ROP and contingency plans.

## V. Contingency Measures Plan

*A. What Are the Requirements for Contingency Measures Under Section 172(c)(9) and Section 182(c)(9) of the CAA?*

Sections 172(c)(9) and 182(c)(9) of the CAA require SIPs to contain additional measures that will take effect without further action by a state or EPA if an area fails to meet ROP requirements or attain the standard by the applicable date. The CAA does not specify how many contingency measures are needed or the magnitude of emissions reductions that must be provided by these measures. However, EPA provided guidance interpreting the control measure requirements of the CAA contingency requirements in the April 16, 1992, General Preamble for Implementation of the Clean Air Act Amendments of 1990. See 57 FR 13498, 13510. In that guidance, EPA indicated that states with moderate and above ozone nonattainment areas should include sufficient contingency measures so that, upon implementation of such measures, additional emissions reductions of up to 3 percent of the emissions in the adjusted base year inventory (or such lesser percentage that will cure the identified failure) would be achieved in the year following the

[27] The ROP contingency requirement is 3 percent of the 1990 adjusted base year VOC emissions. Indiana has chosen to implement sufficient emission controls to pre-implement (prior to being triggered by emission reduction shortfalls) the contingency emission reduction for each of the milestone years.

[28] 3 percent of 1990 adjusted base year emissions. The 1990 adjusted base year emissions are specific to each milestone year as noted in Tables VIIa through VIIc of the proposed rule.

[29] See Table VIII of this proposed rule.

year in which the failure has been identified. States must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions, such as public hearings or legislative reviews. The additional 3 percent emission reduction would ensure that progress toward attainment occurs at a rate similar to that specified under the ROP requirements for severe areas (i.e., 3 percent emission reduction on average per year) and that the State will achieve these emission reductions while conducting additional control measure development and implementation as necessary to achieve the ozone standard.

EPA has determined that federal measures can be considered to analyze whether the contingency measure requirements have been met. While these measures are not SIP-approved contingency measures which would apply if an area fails to attain, EPA believes that existing federally enforceable measures that are achieving emission reductions during the relevant period can be used to provide the necessary substantive relief. Therefore, federal measures may be used in the analysis, to the extent that the attainment demonstration does not otherwise rely on them or take credit for them. (See, e.g., 66 FR 586, 615 (January 3, 2001).)

*B. How Do the Northwest Indiana Attainment Demonstration and ROP SIP Address the Contingency Measure Requirements?*

The CAA contingency measure requirements require states to have contingency measures for the ROP plan and for the attainment demonstration. Since the measures are required to take effect without further action by the state or EPA if an area fails to meet the applicable requirement, there are slightly different considerations that apply to contingency measures for ROP plans and for the attainment demonstration.

Contingency Measures for the ROP Plans

Measures used to meet the contingency requirement for ROP plans have to take effect without further action in a reasonable time-frame. As noted above in the discussion of Indiana's post-1999 ROP plan, Indiana simply added the VOC emission reduction that would be required for contingency measures to the ROP emission reduction requirement for each milestone year. The State then identified total creditable reductions that will be implemented by each milestone year, fulfilling both the core ROP plan requirements and the contingency requirement (See ROP approval section of this notice). For example, in the 2002 rate of progress plan, the reduction requirement for the 9 percent ROP is −4,892 pounds/day. (Excess reductions from previous ROP plans provided for lower 2002 estimated emissions than the target level.) The contingency requirement is 10,577 pounds VOC/day. Indiana calculated the total required reduction of 5,685 pounds/day (10,577 − 4,892). Indiana identified 40,996 pounds/day of reductions in VOC emissions that would be implemented by 2002, thus fulfilling the ROP and contingency measure requirements. Likewise, contingency measure reductions were calculated for the 2005 and 2007 milestone years and were met with measures that will have been implemented prior to the last year of each ROP period (prior to November 15, 2005 and prior to November 15, 2007). These contingency measures adequately fulfill the ROP contingency requirements for Northwest Indiana.

However, to the extent that some of emission control measures were included in the modeled attainment demonstration emission control strategy, they cannot all be used as attainment demonstration contingency measures. They are not in ''excess'' of the emission control measures needed to demonstrate attainment.

Contingency Measures for the Attainment Demonstration

Calculation of Indiana's total 1990 adjusted base year inventory for VOC emissions for the nonattainment area is detailed in EPA's July 18, 1997 (62 FR 38457) approval of the 15 percent ROP plan and in Indiana 15 percent ROP plan submittal and subsequent ROP submittals. Indiana's 1990 adjusted base year inventory of VOC emissions for 2007 for the Northwest Indiana nonattainment area is 348,503 pounds per day (lb/day). Per EPA's guidance, Indiana's contingency measures should achieve VOC reductions equivalent to 3 percent of the adjusted base year inventory, or 10,455 lb/day.

Indiana has identified surplus emissions reductions that occur through 2009 that are available as contingency measure reductions for the attainment demonstration contingency requirement. As provided above, these contingency measure reductions are not the same emission reductions as the contingency measures relied on for the ROP plans.

The total amount of VOC emission reduction needed for Indiana to meet the contingency measure requirement in the Northwest Indiana area is 10,455 lb/day. Indiana has demonstrated a VOC emission reduction of 10,533 lb/day to fulfill the requirement. The control measures and the calculated reduction are listed in the following table:

INDIANA ATTAINMENT DEMONSTRATION CONTINGENCY MEASURE REDUCTIONS

| Control measure | VOC reduction (lb/day) |
|---|---|
| U.S. Steel Agreed Order—Supplementary Environmental Project | 905 |
| Volatile Organic Liquid (VOL) Storage RACT | 2,653 |
| Cold Cleaner Degreasing | 3,661 |
| On-Board Diagnostics | 1,375 |
| Mobile Source Emissions | 1,939 |
| Total | 10,533 |

The emission reductions indicated here are those emission reductions resulting from the noted emission controls but which have not been claimed for achieving ROP and were not included in the modeled attainment demonstration.

Indiana relies on a number of State and federal rules to serve as contingency measures. The State measures have already been implemented and include: The U.S. Steel Agreed Order; the VOL Storage RACT; and the Cold Cleaner Degreasing rule. (We approved the VOL Storage RACT on January 17, 1997 (62 FR 2593) and proposed to approve the Cold Cleaner Degreasing rule on June 7, 2001 (66 FR 30656).) In addition, several federal measures are relied upon which achieve reductions in the 2007–2009 time-frame, including the On-Board Diagnostics rule, and mobile source measures from the Federal Motor Vehicle Emissions Control Program. Indiana documented the methodology for the calculation of the emission reductions, and this documentation is available in the Docket. The measures and the reduction calculations are summarized here. More detail on these emissions calculations is provided in the Docket.

U.S. Steel Agreed Order—Supplementary Environmental Project

As noted above, this project entails a new water treatment plant which uses oil/tar separation tanks, skimmers, equalization tanks, and an ammonia still to treat quench water before the water is sent to an Integral Activated Sludge System as part of a new coke plant water treatment process. The expected VOC emissions reductions from the implementation of this supplementary environmental project, which were not credited toward the attainment demonstration, are 905 lb/day.

VOL Storage RACT

As noted above in the discussion of Indiana's post-1999 ROP plan, IDEM has calculated the VOC emissions reduction for this control measure to be 2,653 lb/day in 2007. This emission reduction was not credited in the ozone attainment demonstration, and, therefore, can be credited toward the contingency measure requirements.

Cold Cleaning Degreasing Rule

As noted above in the discussion of Indiana's post-1999 ROP plan, EPA is only crediting Indiana with a VOC emission reduction of 3,661 pounds/day for this emissions control rule in 2007.

On-Board Diagnostics Test and Mobile Source Emissions

The On-Board Diagnostics (OBD) test standards have already been adopted by Indiana in 326 IAC 13–1.1.[30] The State was to have begun OBD testing in its inspection and maintenance program by January 1, 2001. However, on March 28, 2001, the EPA Administrator signed a final rulemaking to amend the vehicle inspection and maintenance program requirements to incorporate a check of the OBDs system and to extend the date that States need to comply until January 1, 2002. Implementation of this check in the Northwest Indiana area will begin in January 2002. Indiana estimated the amount of VOC emissions reductions resulting from OBD testing that will occur in 2008 and 2009. The result of this estimate, 1,375 pounds/day, is listed in the table.

The reductions in mobile source emissions represent the difference between estimated mobile source emissions for Lake and Porter Counties in 2007 and those in 2009. This estimate was made by applying the MOBILE5b-produced VOC ''All Vehicle'' emission factors for 2007 and 2009 to the projected average summer weekday VMT for the respective years, specific to Lake and Porter Counties. The average speed (37.0) and VMT projections used in this calculation were derived from the Northwestern Indiana Regional Planning Commission's travel demand model. The 2007 and 2009 emission factors were produced by using the same standard MOBILE5b inputs that were used for the attainment demonstration. Based on these calculations, the projected emission reduction from the mobile source contingency measures is 1,939 lb/day.

[30] The OBD test standards are federal requirements, and, as such, do not necessitate the approval of 326 IAC 13–1.1 by the EPA before the OBD-based emissions reductions can be credited to the Post-1999 ROP plan.

These reductions meet the criteria for reductions to be used as contingency measures for the attainment demonstration. The measures are already adopted for implementation and will provide for specific emission control measures after 2007 if the area fails to attain the ozone standard. The measures will take effect without any further action by the State or by the EPA Administrator. Since the emission reductions will occur subsequent to November 15, 2007, the reductions are surplus to the attainment demonstration and were not modeled in the attainment demonstration. Therefore, the EPA proposes to approve these measures as contingency measures for the Northwest Indiana ozone attainment demonstration.

*C. Do the Northwest Indiana Attainment Demonstration and ROP Plans Meet the Contingency Measure Requirement?*

Indiana has identified contingency measures which will provide for a 3 percent reduction in VOC emissions from the 1990 adjusted base year inventory, as required by section 172(c)(9)and section 182(c)(9) of the CAA appropriately to provide approvable contingency plans for both the attainment demonstration and the ROP plans. Indiana identified excess (excess to the requirements of ROP) emission reductions sufficient to meet the contingency requirement for the Post-1999 ROP plan for each of the milestone years. Indiana, however, did not specify which reductions were considered for contingency purposes. Rather, Indiana added the 3 percent required contingency (approximately 10,500 tons/day) emission reduction to the ROP requirements for each milestone year and then identified creditable reductions, that were being implemented before the last year of each milestone period to fulfill the requirement. This same set of emissions control measures, however, could not be used to fulfill the attainment demonstration requirement since some of the measures were not excess to the emission reductions modeled in the attainment demonstration. Indiana filled this 10,455 lb/day gap by identifying excess emissions reductions occurring subsequent to November 15, 2007 that were not needed for ROP and that had not been modeled in the attainment demonstration, which only included emission reductions through November 15, 2007.

The only remaining question or issue is the timing of the post-2007 emission reductions. As noted above, the General Preamble indicates that the contingency measure emission reductions should be achieved in the year following the year in which the attainment failure has been identified. For the Northwest Indiana area, the attainment date is November 15, 2007. Therefore, the critical attainment ozone season is April through October of 2007 (the last ozone season prior to the attainment date). Following this ozone season, it will take the State of Indiana and other States in the Northwest Indiana downwind environs several months to review and quality assure the 2007 ozone data. EPA must then use these data to make the determination of attainment, which can take up to 6 months after the end of the 2007 ozone season. This means that the determination of attainment will not occur until sometime in 2008. Therefore, 2009 is the ''year following the year'' in which EPA is expected to make the determination of attainment, and Indiana can take credit for any emission controls implemented between 2007 and 2009.

**VI. Mid-Course Review Commitment**

*A. Did Indiana Submit a Mid-Course Review Commitment?*

Indiana has submitted a MCR commitment. Although Indiana does not rely on weight-of-evidence in the final 1-hour ozone attainment demonstration, Indiana has submitted a MCR commitment letter. In the December 16, 1999 proposed rulemaking, the EPA provided for Indiana to submit a MCR commitment letter because the 1-hour ozone attainment demonstration submitted in 1998 had modeling which relied on weight-of-evidence. The most recent modeling submitted in the attainment demonstration SIP does not rely on weight-of-evidence to demonstrate attainment.[31] EPA's June 1996 guidance also recommends a mid-course review for severe and extreme areas due to the uncertainty of emissions projections that extend out for a number of years in the future. The MCR is a good check on whether the projected emissions reductions are occurring and whether progress is being made toward attainment of the 1-hour ozone standard. Indiana and the other Lake Michigan States have submitted letters of commitment to complete the MCR.

Indiana submitted a letter dated February 21, 2000, which contained a

[31] As noted above, the State's attainment demonstration did include weight-of-evidence to further bolster the validity of the ozone attainment demonstration. In this case the weight-of-evidence is viewed as a useful component of the ozone attainment demonstration given the inherent uncertainties of photochemical dispersion modeling, such as that employed through the use of the UAM.

commitment to complete a mid-course review. The letter and other documents were discussed at a public hearing on November 15, 2000. This commitment provided that Indiana would perform the MCR within 2 years after the implementation of the statewide $NO_X$ emission controls. More recently, Indiana has submitted a letter dated June 4, 2001 in which Indiana commits to submit the mid-course review by December 31, 2004, the date recommended by EPA.

## VII. $NO_X$ Waiver

### *A. What Is the History of the $NO_X$ Emissions Control Waiver in the Chicago-Gary-Lake County Ozone Nonattainment Area?*

Part D of the CAA establishes the SIP requirements for nonattainment areas. Subpart 2, part D of the CAA establishes additional provisions for ozone nonattainment areas. Section 182(b)(2) of this subpart requires the application of RACT regulations for major stationary VOC sources located in moderate and above ozone nonattainment areas as well as in ozone transport regions. States with affected areas were required to submit RACT regulations by November 15, 1992. Section 182(a)(2)(C) requires the application of NSR regulations for major new or modified VOC sources located in marginal and above ozone nonattainment areas as well as in ozone transport regions. States were required to adopt revised NSR regulations by November 15, 1992. Section 182(f) requires States to apply the same requirements to major stationary sources of $NO_X$ as apply to major stationary sources of VOC. Therefore, the RACT and NSR requirements also apply to major stationary sources of $NO_X$ in ozone nonattainment areas and in ozone transport regions (the Chicago-Gary-Lake County ozone nonattainment area is not part of an ozone transport region).

The section 182(f) requirements are discussed in detail in EPA's ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (57 FR 55628, November 25, 1992). For ozone nonattainment areas located outside of an ozone transport region, the $NO_X$ emission control requirements do not apply to $NO_X$ sources if: (1) The EPA determines that net air quality benefits are greater in the absence of $NO_X$ emission reductions; or (2) the EPA determines that additional reductions of $NO_X$ emissions would not contribute to attainment of the ozone standard in the area. Where any one of these tests is met (even if the other test is failed), the $NO_X$ RACT and NSR requirements of section 182(f) would not apply and may be ''waived.'' See section 182(f)(1). In addition, under section 182(f)(2) of the CAA, if the EPA determines that excess reductions in $NO_X$ emissions would be achieved under section 182(f)(1) of the CAA, the EPA may limit the application of section 182(f)(1) to the extent necessary to avoid achieving such excess emission reductions.

In addition to determining the applicability of $NO_X$ requirements for RACT and NSR, the section 182(f) waiver process may also determine the applicability of certain requirements applicable to $NO_X$ under the CAA's mobile source transportation and general conformity requirements, which assure conformity of federal and state transportation programs and projects to approved SIPs. The general and transportation conformity requirements are found at section 176(c) of the CAA. The conformity requirements apply on an area-wide basis in all ozone nonattainment areas. The EPA's transportation conformity final rule [32] and general conformity rule [33] reference the section 182(f) exemption process as a means for exempting an affected area from certain $NO_X$ conformity requirements. The approval of a section 182(f) exemption petition in favor of a $NO_X$ waiver results in the exemption of marginal and above ozone nonattainment areas from the emission reduction tests [34] with respect to $NO_X$ under the transportation and general conformity requirements of the CAA. See EPA's May 27, 1994 memorandum entitled ''Section 812(f) Nitrogen Oxides ($NO_X$) Exemptions-Revised Process and Criteria,'' from John Seitz, Director of the Office of Air Quality Planning and Standards. However, once $NO_X$ emission budgets are established under attainment demonstrations and ROP plans, areas must meet the $NO_X$ emission budgets notwithstanding the existence of $NO_X$ waivers.

Similarly, under the I/M program final rule (57 FR 52950), November 5, 1992, the section 182(f) petition is also referenced to determine applicability of I/M-based $NO_X$ emission reductions (I/M $NO_X$ emission cut-points). The I/M requirements for serious and above ozone nonattainment areas are found at section 182(c)(3) of the CAA. Basic I/M testing programs must be designed such that no increase in $NO_X$ emissions occur as a result of the programs. So long as this is done, if a $NO_X$ waiver petition is granted to an area required to implement a basic I/M program, the basic I/M $NO_X$ emission cut-points may be omitted. Enhanced I/M testing programs must be designed to reduce $NO_X$ emissions consistent with an enhanced I/M performance standard. If a $NO_X$ waiver petition is granted to an area required to implement an enhanced I/M program, the $NO_X$ emission reduction is not required, but the enhanced I/M program must be designed to offset $NO_X$ emission increases resulting from the repair of vehicles due to hydrocarbon or carbon monoxide emission failures detected through the I/M program.

As part of a July 13, 1994 submittal from LADCO, the States of Illinois, Indiana, Michigan, and Wisconsin petitioned the EPA for a waiver of the $NO_X$ emission requirements of section 182(f) of the CAA and for a waiver of above-described $NO_X$ emission control requirements for conformity and basic and enhanced I/M in the ozone nonattainment areas in the Lake Michigan ozone modeling domain (this includes the Chicago-Gary-Lake County ozone nonattainment area). The EPA reviewed this petition in proposed rulemaking on March 6, 1995 (60 FR 12180) and in final rulemaking on January 26, 1996 (61 FR 2428). The final rulemaking approved the existing waiver of RACT, NSR, and certain I/M and general conformity $NO_X$ requirements in the subject ozone nonattainment areas. The EPA also granted an exemption from certain transportation conformity $NO_X$ requirements for ozone nonattainment areas classified as marginal or transitional within the Lake Michigan ozone modeling domain on February 12, 1996 (61 FR 5291). These exemptions were granted based on a data analysis/modeling demonstration showing that additional $NO_X$ emission reductions either would not contribute to or would interfere with attainment of the 1-hour ozone standard for ozone nonattainment areas within the ozone modeling domain.

[32] ''Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. or the Federal Transit Act,'' as amended August 15, 1997 (62 FR 43780).

[33] ''Determining Conformity of General Federal Actions to State or Federal Implementation Plans; Final Rule,'' November 30, 1993 (58 FR 63214).

[34] Prior to the approval of an ozone attainment demonstration or a ROP plan, an ozone nonattainment area granted a $NO_X$ waiver may be exempted from the conformity requirements for build/no-build test and a less-than-1990 emissions test. After an attainment demonstration or a ROP plan containing motor vehicle emissions budgets is approved and the emissions budgets are found to be adequate by the EPA, conformity determinations must be conducted using the motor vehicle emissions budgets and the $NO_X$ waiver no longer applies for conformity purposes.

The continued approval of the exemption was made contingent on the results of the States' final ozone attainment demonstrations and emission control plans for the ozone modeling domain [35] (61 FR 2428, January 26, 1996). It was noted that the ozone modeling in the final ozone attainment demonstrations would supersede the ozone modeling information that provided the basis for the support of the $NO_X$ emissions control waiver. To the extent that the final attainment plans include $NO_X$ emission controls on major stationary sources in the ozone nonattainment areas in the Lake Michigan ozone modeling domain, we noted that we would remove the $NO_X$ emissions control waiver for those sources. We agreed that the $NO_X$ emissions control waiver should be continued for all sources and source categories not covered by new $NO_X$ emission controls in the final attainment demonstrations. Consistent with those statements, EPA is reconsidering the existing $NO_X$ waiver as part of the rulemaking on the final ozone attainment demonstration plans.

*B. What Are the Conclusions of the State Regarding the Impact of the Ozone Attainment Demonstration on the $NO_X$ Control Waiver?*

The State of Indiana has included $NO_X$ emission controls resulting from plans to meet EPA's $NO_X$ SIP Call as critical components of the ozone attainment demonstration for the Northwest Indiana area. The State concludes that, in light of the $NO_X$ controls for certain sources included in the final 1-hour ozone attainment demonstration, the $NO_X$ waiver is now moot for these sources. The attainment demonstration and ROP plans, however, do not take credit for $NO_X$ emission reductions resulting from the implementation of $NO_X$ RACT, $NO_X$ NSR, and vehicle I/M $NO_X$ emission cut-points.

*C. What Are the Conclusions That Can Be Drawn Regarding the $NO_X$ Control Waiver From Data Contained in the State's Ozone Attainment Demonstration?*

The State has taken credit for $NO_X$ emission reductions in the Northwest Indiana area resulting from the new EGU, major non-EGU boilers and turbines, and major cement kiln $NO_X$ emission control regulations. Chart 4.3 in the State's December 2000 ''Attainment Demonstration And Technical Support Document: Northwest Indiana Severe Ozone Nonattainment Area: Lake and Porter Counties, Indiana'' clearly demonstrates a significant $NO_X$ emission reduction in Northwest Indiana expected to occur as the result of EPA's $NO_X$ SIP Call.

*D. What Are the EPA Conclusions Regarding the Existing $NO_X$ Waiver Given the Available Ozone Modeling Data?*

The fact that the State and LADCO have modeled ozone benefits for $NO_X$ emission controls, including $NO_X$ emission controls on EGUs, major non-EGU boilers and turbines, and major cement kilns in the Northwest Indiana area, indicates that the $NO_X$ waiver as initially granted should be revisited. The initial broad waiver was based on the demonstration that $NO_X$ controls in the ozone nonattainment areas within the Lake Michigan ozone modeling domain [36] would not lower peak ozone concentrations in the modeling domain. The final ozone attainment demonstration shows that this earlier conclusion is no longer supported given the currently available ozone modeling data. The final attainment demonstration supports the conclusion that $NO_X$ controls on EGUs, large non-EGU boilers and turbines, and cement kilns, to the extent planned to occur as a result of compliance with EPA's $NO_X$ SIP Call, will lower peak ozone concentrations in Grid M and in the modeling domain originally considered in the granting of the $NO_X$ waiver.

In this notice, EPA proposes to amend the $NO_X$ waiver to the extent that the State has assumed $NO_X$ emission reduction credits for EGUs, major non-EGU boilers and turbines, and major cement kilns under the $NO_X$ SIP Call to support the ozone attainment demonstration. The $NO_X$ waiver would be removed for those $NO_X$ sources controlled under the rules implementing the ozone attainment demonstration, that is, for all sources covered by the State's $NO_X$ rules in the Northwest Indiana area.

Since additional $NO_X$ emission controls beyond those already planned in the ozone attainment demonstration are not needed to attain the ozone standard in the ozone modeling domain and since Indiana has not assumed $NO_X$ emission reductions resulting from certain emission control requirements as part of the ozone attainment demonstration and post-1999 ROP plan, the $NO_X$ waiver remains supportable for RACT, NSR, transportation and general conformity, and I/M. This conclusion is consistent with the excess $NO_X$ emission reduction test provisions of section 182(f)(2) of the CAA. $NO_X$ emission reduction credits for these waived emission control measures are not assumed in the State's ozone attainment demonstration. EPA, therefore, proposes to shift the basis for the $NO_X$ waiver from section 182(f)(1) of the CAA, as indicated in the January 1996 approval of the existing waiver, to section 182(f)(2) of the CAA.

## VIII. Mobile Source Conformity Emissions Budgets and Commitment To Re-model Using MOBILE6

*A. What Are the Requirements for Mobile Source Conformity Emissions Budgets?*

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. This requirement applies to transportation plans, programs and projects developed, funded or approved under title 23 U.S.C. or the Federal Transit Act (transportation conformity) and to all other federally supported or funded projects (general conformity). EPA's transportation conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do conform. Conformity to a SIP means that activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

Attainment demonstrations and ROP Plans are required to contain adequate motor vehicle emissions budgets derived from the mobile source portion of the demonstrated attainment and ROP emission inventories. The motor

[35] At the time the $NO_X$ control exemption was granted, the States had not completed the final ozone attainment demonstrations for the Lake Michigan ozone modeling domain. The $NO_X$ exemption/waiver petition was supported by ozone modeling data available at the time of the exemption approval. This ozone modeling data included sensitivity analyses investigating the potential impacts of $NO_X$ emission changes on peak ozone concentrations within the ozone modeling domain. It was recognized that the final ozone attainment demonstrations could ultimately be based on different input data that would provide a different picture of the impacts of $NO_X$ emission changes on peak ozone concentrations.

[36] At the time of the granting of the waiver, the Lake Michigan ozone modeling domain was substantially smaller than Grid M, covering the Northeast portion of Illinois, Northwest portion of Indiana, Southeast portion of Wisconsin, and Southwest portion of Michigan centering on the lower half of Lake Michigan.

vehicle emissions budgets establish caps on mobile source emissions. VOC and $NO_X$ emissions associated with transportation projects, transportation improvement programs, and long-range transportation plans cannot exceed these caps. The criteria for judging the adequacy of motor vehicle emissions budgets are detailed in the transportation conformity regulations in 40 CFR 93.118.

*B. How Were the Indiana Attainment Demonstration and ROP Emissions Budgets Developed?*

Indiana has submitted mobile source emissions budgets for VOC and $NO_X$ for the 2007 attainment year based on the emissions analyses included in the attainment demonstration. Indiana has also submitted mobile source emission budgets for VOC for the year 2002 and 2005 based on the ROP emissions calculations. The following outlines the techniques used by Indiana to derive the VOC and $NO_X$ emissions budgets.

VMT growth estimates were derived consistent with the 15 percent ROP plan and 9 percent ROP plan for the Northwest Indiana area. An interagency consultation process involving the Indiana Department of Transportation (INDOT), IDEM, the Federal Highway Administration, the EPA and NIRPC took place. The 2007 budgets are consistent with the attainment demonstration. EPA found the emission budgets to be adequate on May 31, 2000 (see 65 FR 38277, June 20, 2000). The State estimated the benefits of the Tier II engine regulations and low sulfur gasoline requirements by using the EPA MOBILE5 information sheet #8. The 2002 and 2005 VOC motor vehicle emission budgets likewise used the same transportation network assumptions and MOBILE modeling, the only difference being the year and the transportation system and controls that are in place in the respective years. Emission factors were generated for 2002, 2005 and 2007 using EPA's MOBILE5b emission factor model. The emission factors for 2005 and 2007 were then adjusted to reflect implementation of the Tier II/Low Sulfur gasoline program by using the EPA-supplied information sheet since this national program will be in place in 2004. The resulting motor vehicle emissions budgets for the 2007 attainment year are 9.4 TPD of VOC and 24.29 TPD of $NO_X$. The VOC budget for ROP for 2002 is 13.13 TPD, and the VOC budget for 2005 is 10.99 TPD. The 2002 and 2005 budgets are based on the control measures identified in the ROP portion of the submittal. Since Indiana relied on emission reductions from Tier 2 under the EPA-supplied information sheet, Indiana has committed to revise the emissions budgets within 2 years after the release of the MOBILE6 emission factor model. Indiana addressed these emissions budgets and its commitment to revise the budgets using MOBILE6 in the attainment demonstration submittal.

The LADCO attainment demonstration modeling includes the most recent 2007 Northwest Indiana link based transportation network provided to LADCO by NIRPC. The mobile source control measures considered in the development of the emissions budgets include: enhanced vehicle inspection and maintenance (I/M); federal reformulated gasoline; the Federal Motor Vehicle Emissions Control Program, federal gasoline vapor pressure requirements, the National Low Emission Vehicle program; the Heavy Duty Diesel Vehicle standards, and the Tier II/Low Sulfur gasoline requirements. The attainment demonstration modeling conducted by LADCO for the Northwest Indiana area and Grid M, as was discussed earlier in this notice, demonstrated attainment of the 1-hour ozone standard.

*C. Did Indiana Commit To Revise the Budgets When EPA Releases MOBILE6?*

In order for EPA to approve attainment demonstrations, states whose attainment demonstrations include the effects of the Tier II/Low Sulfur gasoline program need to commit to revise and resubmit their attainment demonstration motor vehicle emission budgets based on MOBILE6 after EPA releases the new emission factor model, because Tier II reductions cannot be properly accounted for using the current version of the model (MOBILE5b). This policy was detailed in the supplemental notice of proposed rule issued on July 28, 2000 (65 FR 46383). Indiana committed to revising its 2002, 2005 and 2007 motor vehicle emissions budgets within two years of the release of MOBILE6. In addition, no conformity determinations will be made during the second year following the release of MOBILE6 unless adequate MOBILE6-derived budgets are in place. If the State fails to meet its commitment to submit revised budgets using MOBILE6, EPA could make a finding of failure to implement the SIP, which would start a sanctions clock under CAA Section 179.

*D. Are the Indiana Emissions Budgets Adequate for Conformity Purposes?*

Indiana's motor vehicle emission budgets were posted on the EPA Web site (http://www.epa.gov/otaq/traq) for the 30-day adequacy public comment period. The comment period associated with the Web posting closed March 28, 2001. We received no comments on the adequacy of the budgets. Based on EPA's review of the State's 2002, 2005 and 2007 motor vehicle emission budgets, we found the budgets adequate in a letter to the State on May 9, 2001. Subsequently, we published a notice in the **Federal Register** on May 29, 2001 (66 FR 29126) announcing this finding. The finding was effective on June 13, 2001. The finding is available at EPA's conformity website: *http://www.epa.gov/otaq/transp/*, (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved. We have described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision''). We followed this guidance in making our adequacy determination. EPA is today proposing to approve the motor vehicle emissions budgets. Since Indiana has committed to revise the emissions budgets following the release of the MOBILE6 emission factor model, our approval of the emission budgets reviewed here would only last until we receive the revised emissions budgets and find them to be adequate.

As we proposed on July 28, 2000 (65 FR 46383), the approval action we are proposing today will be effective for conformity purposes only until revised attainment motor vehicle emissions budgets are submitted and we have found them to be adequate. The revised MOBILE6 attainment emissions budgets will apply for conformity purposes as soon as we find them to be adequate.

We are limiting the duration of our approval in this manner because we are only approving the attainment demonstrations and their emissions budgets because the State has committed to revise them using MOBILE6. Therefore, once we have confirmed that the revised MOBILE6 emissions budgets are adequate, they will be more appropriate than the emissions budgets we are proposing to approve for conformity purposes now.

If the revised emissions budgets raise issues about the sufficiency of the attainment demonstration, EPA will work with the States on a case-by-case

basis to address these issues. If the revised emissions budgets show that motor vehicle emissions are lower than the budgets we are proposing to approve, a reassessment of the attainment demonstration's analysis will be necessary before reallocating the emission reductions or assigning them to the motor vehicle emissions budgets as a safety margin. The area must assess how its original attainment demonstration is impacted by using MOBILE6 versus MOBILE5 before it reallocates any apparent motor vehicle emissions reductions resulting from the use of MOBILE6.

## IX. Reasonably Available Control Measure (RACM) Analysis

### *A. What Are the Requirements for RACM?*

Section 172(c)(1) of the CAA requires SIPs to contain RACM as necessary to provide for attainment. EPA has previously provided guidance interpreting the RACM requirements of section 172(c)(1) of the CAA. See 57 FR 13498, 13560. In that guidance, EPA indicated its interpretation that potentially available measures that would not advance the attainment date for an area would not be considered RACM. EPA also indicated in that guidance that states should consider all potentially available measures to determine whether they were reasonably available for implementation in the area, and whether they would advance the attainment date. Further, states should indicate in their SIP submittals whether measures considered were reasonably available, and, if measures are reasonably available, they must be adopted as RACM. Finally, EPA indicated that states could reject potential RACM measures either because they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, or would be difficult or impossible to implement for various reasons related to local conditions, such as economics or implementation concerns. The EPA also issued a recent memorandum on this topic, ''Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas.'' John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999. Web site: http://www.epa.gov/ttn/oarpg/t1pgm.html.

### *B. How Does This Submission Address the RACM Requirement?*

The Northwest Indiana attainment demonstration addresses RACM through several aspects of the submittal. Mobile source measures have been addressed through evaluation of Transportation Control Measures (TCMs) and Rate of Progress (ROP) Plans in the Northwest Indiana area. Stationary sources and area sources were addressed by Indiana through an exhaustive search for cost-effective controls and additional emission reductions as part of the ROP planning process to determine the most reasonably available control measures. Also, Indiana has adopted control measures which have gone beyond the federally-mandated stationary and area source controls. Perhaps most importantly, the Northwest Indiana attainment demonstration contains UAM modeling which demonstrates that the Northwest Indiana area cannot attain solely through VOC reductions in the Northwest Indiana nonattainment area. Attainment of the 1-hour ozone standard in the Northwest Indiana area relies on reductions of transported ozone to attain the 1-hour ozone standard. To demonstrate attainment of the 1-hour ozone standard, the Lake Michigan Air Directors Consortium (LADCO) modeling used reductions on the order of 50–60 percent for VOCs in the severe nonattainment areas. The Northwest Indiana attainment demonstration relies on emission reductions of over 65 percent, including both ROP creditable emission reductions and non-creditable emission reductions. Any potential emission reductions from the implementation of any additional potential RACM measures would be very small compared to the ROP emission reductions that will be reached by the 2007 attainment date.

The Consideration and Implementation of Transportation Control Measures (TCMs)

The following paragraphs describe the process that has been used to evaluate reasonably available TCMs in the Northwest Indiana area. IDEM has worked with NIRPC and various stakeholder groups to evaluate and implement TCMs which are reasonably available. IDEM conducted the first exhaustive look at TCMs in 1993 as part of its efforts to comply with Section 182(d)(1)(A) of the Clean Air Act, which requires severe nonattainment areas to develop a ''VMT Offset SIP'' to identify and adopt ''specific and enforceable transportation control strategies and transportation control measures(TCMs) to offset any growth in emissions from growth in vehicle miles of travel.'' A consultant, Cambridge Systematics, developed a report on April 30, 1993, entitled ''TCMs to Offset Emissions from VMT Growth in Northwest Indiana.'' This study revealed that no additional TCMs needed to be adopted to meet the requirements of the VMT Offset SIP. However, the study also provided valuable information on the feasibility and effectiveness of TCMs in the Northwest Indiana area. As a starting point, it recognized a wide range of potential measures, including those listed in section 108(f) and then looked in more detail at specific measures that are likely to provide the most benefits and be reasonably available in the Northwest Indiana area. Of all the strategies identified, the State and NIRPC determined that the only strategy that could potentially have appreciable impact was area-wide ride sharing incentives. The next three most effective strategies, the transit improvement package, the South Shore Line Park-and Ride program and Transportation Management were identified to have a maximum of a 0.33 percent effect on VMT.

Indiana and NIRPC further evaluated potential TCMs in 1998 in the process of developing further ROP plans and the attainment demonstration. August and September 1998 Fact Sheets presented at these meetings are available in the docket. Again, an extensive set of potential measures, including area-wide ridesharing incentives were evaluated. However, in comparison to the reductions that were being accomplished through national mobile source measures and the reductions that could be accomplished through regional $NO_X$ measures, the reductions that could be achieved were minimal, not substantial enough to advance the attainment date, and also, in most cases, more costly. Due to federal measures and the State ROP plan measures, emissions of VOCs from motor vehicles in the Northwest Indiana area are expected to decrease nearly 75 percent between 1990 and 2007. As these measures go into place, reducing the mile per gallon emissions from vehicles and the total contribution to nonattainment from the mobile source sector, additional mobile source measures become less reasonable, more costly on a dollar per ton emissions reduction basis and less likely to advance the attainment date. For these reasons, additional TCMs in the Northwest Indiana area are not considered RACM.

Even though these measures are not expected to advance the attainment

date, NIRPC has implemented a wide range of transportation projects which provide long term air quality benefits as part of its conformity requirements and which, in part are supported by the Congestion Mitigation and Air Quality (CMAQ) Program. The CMAQ program funds are administered by the Federal Highway Administration; however, selection of projects takes place at the MPO level. These projects include increased commuter parking at transit stations, new transit service into Chicago, signal coordination projects, a vanpool program, an intelligent transportation system on the most congested freeway, I–94, a transit needs analysis and bicycle and pedestrian programs.

Stationary Source and Area Sources RACM Analysis

IDEM has examined all sources in the nonattainment area for possible reductions. The Indiana 15 percent ROP plan, 9 percent ROP plan and the continuing 3 percent per year ROP emission reductions have resulted in the implementation of emission controls on a wide variety of sources and have gone beyond the federally mandated requirements for a severe nonattainment area. Indiana, in cooperation with the other Lake Michigan States of Illinois, Wisconsin and Michigan, worked to consider regional control measures and strategies to bring the four State Lake Michigan area into attainment. The control measures considered were part of the Lake Michigan Ozone Control Program (LMOP). The procedures used to identify, evaluate, and select possible control measures were described in a 1992 document entitled, ''Protocol for Selection of Control Measures and Strategies for Modeling.'' LADCO provided several opportunities for comments on this protocol, including conducting public hearings and distributing the protocol to stakeholders for comments. The protocol's purpose included, ''to insure that no reasonable control measures were omitted from consideration and to establish a process to analyze and assess the potential impacts of each control measure in an objective and equitable manner.'' Initially, a large number of control measures which reduced VOC and/or $NO_X$ emissions were examined in white papers prepared and distributed for public comment. The measures were then evaluated and ranked for modeling as part of the attainment demonstration modeling.

The State considered an extensive list of potential control measures and chose measures which went beyond the federally mandated controls, and which were found to be cost-effective and technologically feasible. In addition to the federally mandated measures, Indiana chose to adopt several programs including, most recently, comprehensive rules requiring reductions at sinter plants and cold cleaning degreasing operations for emission reductions substantial enough to exceed the ROP requirements. These regulations went beyond federally mandated controls and are documented in the State's submittals. Through the post-1999 and prior ROP plans, the most significant area source categories have been addressed, including degreasing, commercial/consumer products, surface coating, and petroleum transport and refueling. Total creditable ROP reduction measures amount to 104 TPD of VOC emissions reductions in the Northwest Indiana ozone nonattainment area. Indiana used the ROP process to identify and implement all reasonably available control measures leaving only measures achieving small reductions in VOCs, resulting in high cost-effectiveness values. Through this process, all of the following were implemented in Northwest Indiana:

| 15% ROP summary for Lake and Porter Counties | Emission reductions (pounds VOC/day) |
|---|---|
| **Creditable Reduction From Mandatory Controls** | |
| Mobile Sources: | |
| Enhanced Vehicle Inspection and Maintenance (I/M) Program (326 IAC 13–1.1) | 6,817 |
| Federal Reformulated Gasoline Program (40 CFR Part 80, Subpart D) | 14,905 |
| Area Sources: | |
| Stage II Gasoline Vapor Recovery (326 IAC 8–4–6) | 9,824 |
| Federal Architectural and Industrial Maintenance (AIM) Coatings Rule | 2,920 |
| Point Sources: | |
| Non-Control Techniques Guideline (CTG) Reasonably Available Control Technology (RACT) Rule (326 IAC 8–7) | 4,559 |
| **Creditable Reductions From Non-Mandatory Controls** | |
| Point Sources: | |
| Coke Oven Battery Shutdowns at Inland Steel Flat Products (326 IAC 6–1–10.1(k)(5)) | 23,609 |
| Area Sources: | |
| Automobile Refinishing (326 IAC 8–10) | 4,679 |
| Residential Open Burning (326 IAC 4–1) | 929 |
| Total Creditable Reductions from 15 percent ROP plan | 68,242 |

| The post-1996 ROP plan control strategies and their emission reductions | Emission reductions (pounds VOC/day) |
|---|---|
| Coke Oven By-Product Recovery Plant NESHAP (40 CFR Part 61 Subpart L) | 55,371 |
| Inland Steel Coke Battery Shutdowns (326 IAC 6–1–10.1(k)(5)) (40 CFR 52.770(c)(99)) | 6,666 |
| Reformulated Gasoline Use in Small Engines (40 CFR Part 80) | 575 |
| New Small Engine Emission Standards (40 CFR Part 90) | 6,034 |
| Volatile Organic Liquid Storage Reasonably Available Control Technology (326 IAC 8–9) (40 CFR 52.770(c)(111)) | 2,700 |
| Coke Oven NESHAP (40 CFR Part 63 Subpart L) | 6,314 |
| Total Emission Reduction from Post-1996 9 percent ROP plan | 77,660 |

For the additional emission reductions that are achieved in the 2002, 2005 and 2007 ROP plans, please see the ROP section in this proposed rule. The result of this comprehensive plan is that all of the most significant point and area source emissions that are reasonable to control are covered by either RACT or a specific Indiana rule targeted at achieving reasonable VOC reductions. Reductions from any other potential RACM measures are relatively small; certainly far less than the ROP reductions and the reductions that were modeled by LADCO in the Lake Michigan area attainment demonstration.

Based on reviews of the State's analysis of measures and lists of control measures which have been implemented in other nonattainment areas, EPA believes that there are no other emission control measures that Indiana could have implemented that would have accelerated attainment. EPA is not aware of other practicable measures which will result in comparable emissions reductions that

can be implemented sooner than those contained in Indiana's ROP.

Modeling Analysis

The State's air quality modeling results indicate that additional VOC and $NO_X$ controls, beyond those already addressed in the ozone attainment demonstration and those to be achieved through EPA's $NO_X$ SIP Call, within the nonattainment area will not accelerate attainment of the ozone standard. Air quality modeling was conducted by LADCO for the four Lake Michigan States. LADCO and the four States also conducted special monitoring of ozone and ozone precursors to support the attainment demonstration modeling efforts. A significant conclusion of the monitoring study is that there are high levels of ozone and ozone precursors entering the Lake Michigan region. The high boundary conditions were measured to be on the order of 70–110 ppb of ozone on some hot summer days. This transported ozone significantly contributes to ozone exceedances in the region. Elevated ozone levels were found to extend well upwind of the Lake Michigan region covering large areas of the eastern United States. These results and those of other areas led to the OTAG effort.

The initial LADCO modeling and sensitivity tests found VOC emissions in the nonattainment area would need to be reduced as much as 90 percent to provide for attainment of the 1-hour ozone standard if the transported ozone were not reduced. However, if reductions in boundary conditions were considered, then the VOC reduction target is still very high, on the order of 50–60 percent depending on the boundary conditions. The sensitivity tests found that reducing $NO_X$ in the nonattainment area could actually increase ozone concentrations and, thus, the area was granted a $NO_X$ waiver in 1996. This is discussed in detail in the section on the $NO_X$ waiver in this proposal. Thus, reductions in $NO_X$ in the nonattainment area will not bring the area into attainment and reductions in VOCs of 90 percent in the nonattainment area are not possible without draconian measures. Indiana has already explored all possible RACM to find reductions for the ROP and any other possible VOC reductions from sources in the Northwest Indiana area would not be enough to reach attainment or advance the attainment date.

Indiana has submitted these modeling analyses in the Phase I and II attainment demonstration submittals. The results of modeling reductions in emissions only within the nonattainment area did not demonstrate attainment of the ozone standard, and, therefore, this demonstrates that such emission reductions alone could not advance the attainment date. It was only when the boundary conditions were changed that the modeling demonstrated attainment. The long range transport of ozone and precursor emissions from upwind of the area were the significant contributor to the nonattainment problem. Air quality modeling, which EPA performed in association with the $NO_X$ SIP Call, (63 FR 57356) confirmed the states' analyses. These modeling runs conclusively show that the Northwest Indiana area cannot attain the ozone standard without the $NO_X$ SIP Call measures to reduce transported ozone. Reductions from other potential RACM measures are comparatively small and would not advance the attainment date.

In December of 2000, Indiana submitted air quality modeling and a strategy for reducing emissions, including statewide $NO_X$ reductions needed to meet the $NO_X$ SIP Call. The Technical Support Document for the subregional modeling analysis contains a variety of control strategies modeled to evaluate their impact on ozone air quality. Of particular importance is the sensitivity run SR1a, which evaluated the impact of one of the more substantial VOC reduction measures, Tier II/Low Sulfur gasoline. This measure was calculated by LADCO to provide a VOC reduction of about 200 TPD in 2007 for the entire Lake Michigan Nonattainment area. The modeling results summarize that the improvement in ozone air quality from this measure provides a 1–2 ppb ozone concentration improvement. Any of the VOC control measures that were not selected for implementation as part of Indiana's ROP or attainment plan are significantly smaller than the Tier II/Low Sulfur control measure (produce significantly VOC emission reductions). For example, the most potentially beneficial TCM, according to the Cambridge Systematics report, area-wide ridesharing, would only produce a maximum VOC emission reduction benefit of half a ton per day. Thus, their contribution to improving ozone air quality would be much less than 1 ppb and would not advance attainment of the ozone standard earlier than 2007.

As previously described, the modeling analyses submitted by Indiana and conducted by LADCO showed that it was only when the states tested the impacts of $NO_X$ reductions beyond the boundaries of the nonattainment area that the modeling indicated improvements in air quality to the degree necessary to attain the standard. In other words, the transport of ozone and precursor emissions from upwind areas significantly contribute to the Northwest Indiana and Lake Michigan States nonattainment problem. Air quality modeling which EPA performed in association with the $NO_X$ SIP Call (63 FR 57356) confirmed the States' analyses.

Indiana held public hearings on these materials and took public comment on the modeling and conclusions. Any measures that have not been included would provide only marginal air quality improvements, and at significantly greater expense. Additional control measures beyond the measures being implemented under the 3 percent per year ROP emission reductions in the Northwest Indiana area and regional $NO_X$ emission reductions are, therefore, not reasonable since the implementation of such measures will not significantly improve air quality and, to make a significant impact, would need to be draconian in nature.

Thus, the Northwest Indiana area relies on reductions from outside the nonattainment area from EPA's $NO_X$ SIP Call and section 126 rule (65 FR 2674, January 18, 2000) to reach attainment. In the $NO_X$ SIP Call (63 FR 57356), EPA concluded that $NO_X$ emission reductions from various upwind states were necessary to provide for timely ozone attainment in various downwind states. The $NO_X$ SIP Call, therefore, established requirements for control of sources of significant emissions in all upwind states. However, these reductions were not slated for full implementation until May 2003. Further, the United States Court of Appeals for the District of Columbia Circuit recently ordered that EPA could not require full implementation of the $NO_X$ SIP Call prior to May 2004. *Michigan, et al.,* v. *EPA,* D.C. Cir. No. 98–1497, Order of Aug. 30, 2000. In addition, all of the necessary VOC reductions that are modeled in the attainment demonstration for the Northwest Indiana area will not be in place until 2007. Thus, the attainment demonstration modeling indicates that the area successfully achieves the emissions reductions necessary to reach attainment in 2007 and that additional potential RACM could not advance the attainment date.

*C. Does the Northwest Indiana Attainment Demonstration Meet the RACM Requirement?*

The EPA has reviewed the submitted attainment demonstration documentation, the process used by the Metropolitan Planning Organization and the State to review TCMs, other possible

reduction measures for point and area sources, and the emissions inventory for the Northwest Indiana area. Although EPA encourages areas to implement available RACM measures as potentially cost-effective methods to achieve emissions reductions in the short term, EPA does not believe that section 172(c)(1) requires implementation of potential RACM measures that either require costly implementation efforts or produce relatively small emissions reductions that will not be sufficient to allow the area to achieve attainment in advance of full implementation of all other required measures.

EPA does not believe that section 172(c)(1) requires implementation of additional measures for Northwest Indiana, but this conclusion is not necessarily valid for other areas. For other areas, some of which may be ''upwind'' areas, such measures may in fact be RACM, and the States in which such areas are located have a responsibility to determine whether additional measures are RACM. In addition, if in the future EPA moves forward to implement another ozone standard, this RACM analysis would not control what is RACM for this or any other areas for that other ozone standard.

Furthermore, EPA encourages areas to implement technically available and economically feasible measures to achieve emissions reductions in the short term even if such measures do not advance the attainment date, since such measures will likely improve air quality. Also, over time, emission control measures that may not be RACM now for an area may ultimately become feasible for the same area due to advances in control technology or more cost-effective implementation techniques. Thus, areas should continue to assess the state of control technology as they make progress toward attainment and consider new control technologies that may in fact result in more expeditious improvement in air quality.

The attainment demonstration for the Northwest Indiana area indicates that the ozone benefit expected to be achieved from regional $NO_X$ emission reductions (such as from the emission controls complying with the $NO_X$ SIP Call) are substantial. In addition, many of the measures designed to achieve emissions reductions from within the nonattainment area will also not be fully implemented prior to the 2007 attainment date. Therefore, EPA concludes that since the reductions from potential RACM measures do not nearly equate to the reductions needed to demonstrate attainment, none of these measures could advance the attainment date prior to full implementation of the $NO_X$ SIP Call-base rules and full implementation of the ROP measures, and, thus, there are no additional potential local measures that can be considered RACM for this area. Additionally, the area cannot advance the attainment date because all of the ROP emission reductions (3 percent per year up to the 2007 attainment year) have been modeled in the attainment demonstration, and the modeling indicates that the reductions are needed to reach attainment of the 1-hour ozone standard by 2007. All of the ROP measures will not be fully implemented until the 2007 attainment date, and, thus the area will not be able to advance the attainment date.

## X. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This proposed action merely proposes to approve state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Volatile organic compounds, Nitrogen oxides, ozone.

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

Dated: July 24, 2001.

**William E. Muno,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 01–19151 Filed 8–2–01; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Friday,
August 3, 2001

# Part III

# Department of Justice

## Immigration and Naturalization Service

## Extension of the Designation of Montserrat Under the Temporary Protected Status Program; Notice

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

**[INS No. 2146–00; AG Order No. 2496–2001]**

**RIN 1115–AE26**

### Extension of the Designation of Montserrat Under the Temporary Protected Status Program

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Notice.

**SUMMARY:** The designation of Montserrat under the Temporary Protected Status (TPS) program will expire on August 27, 2001. This notice extends the Attorney General's designation of Montserrat under the TPS program for 12 months until August 27, 2002, and sets forth procedures necessary for nationals of Montserrat (or aliens having no nationality who last habitually resided in Montserrat) with TPS to register for the additional 12-month period. Eligible nationals of Montserrat (or aliens having no nationality who last habitually resided in Montserrat) may re-register for TPS and an extension of employment authorization. Re-registration is limited to persons who registered during the initial registration period, which ended on August 27, 1998, or who registered after that date under the late initial registration provisions, and who timely re-registered under each of the subsequent extensions. Nationals of Montserrat (or aliens having no nationality who last habitually resided in Montserrat) who previously have not applied for TPS may be eligible to apply under the late initial registration provisions. *See* 8 CFR 244.2 (2001).

**EFFECTIVE DATES:** The extension of the TPS designation for Montserrat is effective August 27, 2001, and will remain in effect until August 27, 2002. The 90-day re-registration period begins August 3, 2001, and will remain in effect until November 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** Rebecca K. Peters, Residence and Status Services Branch, Adjudications, Immigration and Naturalization Service, Room 3214, 425 I Street, NW, Washington, DC 20536, telephone (202) 514–4754.

**SUPPLEMENTARY INFORMATION:**

#### What Authority Does the Attorney General Have To Extend the Designation of Montserrat Under the TPS Program?

Section 244(b)(3)(A) of the Immigration and Nationality Act (Act) states that, at least 60 days before the end of an extension or a designation, the Attorney General must review conditions in the foreign state for which the designation is in effect. 8 U.S.C. 1254a(b)(3)(A). If the Attorney General does not determine that the foreign state no longer meets the conditions for designation, the period of designation is extended automatically for 6 months pursuant to section 244(b)(3)(C) of the Act, although the Attorney General may exercise his discretion to extend the designation for a period of 12 or 18 months. 8 U.S.C. 1254a(b)(3)(C). With respect to Montserrat, such an extension makes TPS available only to persons who have been continuously physically present since August 28, 1997, and have continuously resided in the United States since August 22, 1997.

#### Why Did the Attorney General Decide To Extend the TPS Designation for Montserrat?

On August 28, 1997, the Attorney General designated Montserrat under the TPS program for a period of 12 months. 62 FR 45685. The Attorney General extended the TPS designation three times after determining that the conditions warranting such designation continued to be met each time. See 65 FR 58806 (Oct. 2, 2000); 64 FR 48190 (Sept. 2, 1999); 63 FR 45864 (Aug. 27, 1998).

Since the date of the last extension, the Departments of Justice and State have continued to review conditions in Montserrat. The review has resulted in a consensus that a further 12-month extension is warranted. The reasons for the extension include the continued threat of further volcanic eruptions, the ongoing housing shortage, and the serious health risks from volcanic ash. Citing the Montserrat Volcano Observatory's January 2001 Hazard Assessment, the State Department reported that, ''the volcano's dome is undergoing a period of vigorous growth. Even though the dome collapsed during the March 2000 eruption, it has reemerged and is now at its largest size since the eruption began in 1995. Dome growth has so far been on the south side of the crater, but if growth shifted to the north side, the 150 people living in settlements on the northwest border of the exclusion zone would be in danger. Such a shift in dome growth can occur within a matter of hours.'' According to the Department of State, the Observatory's report concludes that ''further dangerous volcanic activity of the kinds experienced in 1995–1998, including dome collapses, pyroclastic flows, explosive activity, ashfall, and mud flows * * * is therefore likely in the near future.'' On June 6, 2001, the Observatory confirmed for the State Department that conditions remain at a level comparable to that of January 2001. The State Department further notes that a housing shortage persists since residents crowded into the north are unable to return to their homes in the southern part of the island. Over 150 people remain in temporary shelters and 800 still lack permanent housing. In addition to the destruction caused by the eruptions, the ash that periodically covers much of the island poses a health risk to those exposed to it. Even those living in the north of the island are at some risk of contracting lung disease from inhaling airborne particles contained in the volcanic ash.

Based on this review, the Attorney General finds that the conditions that prompted designation of Montserrat under the TPS program continue to be met. 8 U.S.C. 1254a(b)(3)(A). There continues to be a substantial, but temporary, disruption of living conditions in Montserrat as a result of environmental disaster, and Montserrat remains unable, temporarily, to handle adequately the return of its nationals. 8 U.S.C. 1254a(b)(1)(B).

On the basis of these findings, the Attorney General concludes that the TPS designation for Montserrat should be extended for an additional 12-month period. 8 U.S.C. 1254a(b)(3)(C).

#### If I Currently Have TPS, How Do I Re-Register for an Extension?

If you have already been granted TPS through the Montserrat TPS program, your TPS will expire on August 27, 2001. Persons previously granted TPS under the Montserrat program may apply for an extension by filing (1) a Form I–821, Application for Temporary Protected Status, without the fee, (2) a Form I–765, Application for Employment Authorization, and (3) two identification photographs (1½″ x 1½″). To determine whether or not you must submit the one hundred dollar ($100) filing fee with the Form I–765, see the chart below.

Submit the re-registration package to the INS district office that has jurisdiction over your place of residence during the 90-day re-registration period that begins August 3, 2001, and will remain in effect until November 1, 2001.

| If | Then |
|---|---|
| You are applying for employment authorization through August 27, 2002. | You must complete and file:<br>(1) Form I–765, Application for Employment Authorization, with the $100 fee. |
| You already have employment authorization or do not require employment authorization. | You must complete and file:<br>(1) Form I–765, with no filing fee. |
| You are applying for employment authorization and are requesting a fee waiver. | You must complete and file:<br>(1) Fee waiver request and affidavit (and any other information) in accordance with 8 CFR 244.20, and<br>(2) Form I–765, with no fee. |

**How Does an Application for TPS Affect My Application for Asylum or Other Immigration Benefits?**

An application for TPS does not affect an application for asylum or any other immigration benefit. Denial of an application for asylum or any other immigration benefit does not necessarily affect disposition of a separate TPS application, though grounds for denying one form of relief may serve as the basis for denying TPS as well. For example, a person who has been convicted of a particularly serious crime is ineligible for both asylum and TPS. 8 U.S.C. 1158(b)(2); 8 U.S.C. 1254a(c)(2)(B).

**Does This Extension Allow Nationals of Montserrat (or Aliens Having No Nationality Who Last Habitually Resided in Montserrat) Who Entered the United States After August 28, 1997, To File for TPS?**

No. This is a notice of an extension of the TPS designation for Montserrat, not a notice of re-designation for Montserrat for TPS. An extension of TPS does not change the required dates of continuous residence and continuous physical presence in the United States and does not expand TPS availability to include nationals of Montserrat (or aliens having no nationality who last habitually resided in Montserrat) who arrived in the United States after the required dates for continuous physical presence, August 28, 1997, and continuous residence, August 22, 1997.

**Is Late Initial Registration Possible?**

Yes. Some persons may be eligible for late initial registration under 8 CFR 244.2(f)(2). To apply for late initial registration an applicant must:

(1) Be a national of Montserrat (or an alien who has no nationality and who last habitually resided in Montserrat);

(2) Have been continuously physically present in the United States since August 28, 1997;

(3) Have continuously resided in the United States since August 22, 1997; and,

(4) Be admissible as an immigrant, except as otherwise provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that, during the initial registration period from August 28, 1997, through August 27, 1998, he or she:

(1) Was a nonimmigrant or had been granted voluntary departure status or any relief from removal,

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal or change of status pending or subject to further review or appeal,

(3) Was a parolee or had a pending request for reparole, or

(4) Was the spouse or child of an alien currently eligible to be a TPS registrant. 8 CFR 244.2(f)(2).

An applicant for late initial registration must register no later than 60 days from the expiration or termination of the conditions described above. 8 CFR 244.2(g).

**Notice of Extension of Designation of Montserrat Under the TPS Program**

By the authority vested in me as Attorney General under sections 244(b)(1), (b)(3)(A), and (b)(3)(C) of the Act, I have consulted with the appropriate government agencies concerning whether the conditions under which Montserrat was designated for TPS continue to exist. As a result, I determine that the conditions for designation of TPS for Montserrat continue to be met. 8 U.S.C. 1254a(b)(3)(A). Accordingly, I order as follows:

(1) The designation of Montserrat under section 244(b) of the Act is extended for an additional 12-month period from August 27, 2001, to August 27, 2002. 8 U.S.C. 1254a(b)(3)(C).

(2) I estimate that there are approximately 323 nationals of Montserrat (or aliens who have no nationality and who last habitually resided in Montserrat) who have been granted TPS and who are eligible for reregistration.

(3) In order to be eligible for TPS during the period from August 27, 2001, to August 27, 2002, a national of Montserrat (or an alien who has no nationality and who last habitually resided in Montserrat) who has already received a grant of TPS under the Montserrat TPS designation must re-register for TPS by filing a new Application for Temporary Protected Status, Form I–821, along with an Application for Employment Authorization, Form I–765, within the 90-day period beginning on August 3, 2001 and ending on November 1, 2001. Failure to re-register without good cause will result in the withdrawal of TPS. 8 CFR 244.17(c). Some persons who had not previously applied for TPS may be eligible for late initial registration under 8 CFR 244.2(f)(2).

(4) At least 60 days before this extension terminates on August 27, 2002, the Attorney General will review the designation of Montserrat under the TPS program and determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the basis for the determination, will be published in the **Federal Register**. 8 U.S.C. 1254a(b)(3)(A).

(5) Information concerning the Montserrat TPS program will be available at local INS offices upon publication of this notice and on the INS website at *http://www.ins.usdoj.gov.*

Dated: July 30, 2001.

**Larry D. Thompson,**

*Acting Attorney General.*

[FR Doc. 01–19475 Filed 8–2–01; 8:45 am]

BILLING CODE 4410–10–P

Federal Register

Friday,
August 3, 2001

# Part IV

# Department of Defense
# General Services Administration
# National Aeronautics and Space Administration

**48 CFR Part 31**

**Federal Acquistion Regulation; Signing and Retention of High-Technology Workers; Proposed Rule**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 31**

**[FAR Case 2000–014]**

**RIN 9000–AJ00**

## Federal Acquisition Regulation; Signing and Retention of High-Technology Workers

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to withdraw Federal Acquisition Regulation (FAR) case 2000–014, Signing and Retention of High-Technology Workers, which was published in the **Federal Register** at 65 FR 82876, December 28, 2000. The rule proposed to explicitly make allowable signing and retention bonuses that defense contractors often must offer in order to recruit and retain workers that have critical technical skills.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson, Procurement Analyst, at (202) 501–3221. Please cite FAR case 2000–014, withdrawal.

**SUPPLEMENTARY INFORMATION:**

### A. Background:

The proposed rule which was published in the **Federal Register** at 65 FR 82876, December 28, 2000, proposed amending FAR 31.205–34, Recruitment costs, to explicitly allow signing bonuses to recruit, as well as retention bonuses to retain, employees with critical skills (such as scientists and engineers in the software and systems integration fields). The Councils viewed this revision as a clarification since the FAR currently does not disallow these type of expenses. In addition, the rule moved the current limitations on help-wanted advertising costs from FAR 31.205–34(b) to the paragraph that addresses these costs (currently FAR 31.205–34(a)(1)), and made several related editorial changes.

Some of the respondents to the **Federal Register** notice expressed concern that the rule was more restrictive than current FAR provisions, may result in decreased use of bonuses, and makes it even more difficult for Government contractors to compete with other employers for workers with critical technical skills. After review of the public comments, the Councils have concluded that the proposed rule is unnecessary, since recruitment and retention bonuses are already allowable costs on Government contracts, if reasonable and allocable.

### List of Subjects in 48 CFR Part 31

Government procurement.

Dated: July 30, 2001.

**Al Matera,**

*Director,, Acquisition Policy Division.*

[FR Doc. 01–19451 Filed 8–2–01; 8:45 am]

BILLING CODE 6820–EP–P

# Reader Aids

**Federal Register**

Vol. 66, No. 150

Friday, August 3, 2001

## CUSTOMER SERVICE AND INFORMATION

**Federal Register/Code of Federal Regulations**

| | |
|---|---|
| General Information, indexes and other finding aids | **202–523–5227** |
| **Laws** | **523–5227** |
| **Presidential Documents** | |
| Executive orders and proclamations | **523–5227** |
| **The United States Government Manual** | **523–5227** |
| **Other Services** | |
| Electronic and on-line services (voice) | **523–4534** |
| Privacy Act Compilation | **523–3187** |
| Public Laws Update Service (numbers, dates, etc.) | **523–6641** |
| TTY for the deaf-and-hard-of-hearing | **523–5229** |

## ELECTRONIC RESEARCH

**World Wide Web**

Full text of the daily Federal Register, CFR and other publications:

**http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

**http://www.nara.gov/fedreg**

**E-mail**

**PENS** (Public Law Electronic Notification Service) is an E-mail service for notification of recently enacted Public Laws. To subscribe, send E-mail to

**listserv@listserv.gsa.gov**

with the text message:

subscribe PUBLAWS-L your name

Use listserv@www.gsa.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries.

**Reference questions.** Send questions and comments about the Federal Register system to:

**info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

## FEDERAL REGISTER PAGES AND DATE, AUGUST

39615–40106 ..... 1
40107–40572 ..... 2
40573–40838 ..... 3

## CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Administrative Orders:**
Presidential Determinations:
No. 2001-22 of July 26, 2001 .....40107
Notices:
Notice of July 31, 2001 .....40105
**Executive Orders:**
13221 (See Notice of July 31, 2001) .....40571

**7 CFR**

301.....40573
916.....39615
917.....39615
959.....39621
989.....39623
**Proposed Rules:**
246.....40152
916.....39690
948.....40153, 40155
966.....40158

**9 CFR**

130.....39628

**10 CFR**

**Proposed Rules:**
50.....40626

**12 CFR**

709.....40574
712.....40575
749.....40578
**Proposed Rules:**
701.....40641
702.....40642
741.....40642

**14 CFR**

23.....40580
39 .....39632, 40109, 40582
95.....39633
**Proposed Rules:**
39 .....40161, 40162, 40645, 40646

**16 CFR**

305.....40110
1700.....40111
**Proposed Rules:**
1500.....39692

**19 CFR**

**Proposed Rules:**
122.....40649
123.....40649

**20 CFR**

656.....40584

**26 CFR**

1.....40590
31.....39638
**Proposed Rules:**
1.....40659

**27 CFR**

178.....40596
179.....40596

**32 CFR**

199.....40601
**Proposed Rules:**
199.....39699

**33 CFR**

117 .....40116, 40117, 40118
165.....40120

**36 CFR**

**Proposed Rules:**
1228.....40166

**37 CFR**

202.....40322

**39 CFR**

**Proposed Rules:**
111.....40663

**40 CFR**

9.....40121
51.....40609
52 .....40137, 40609, 40616
63.....40121
180 .....39640, 39648, 39651, 39659, 39666, 39675, 40140, 40141
96.....40609
97.....40609
**Proposed Rules:**
52 .....40168, 40664, 40802
63.....40166, 40324
153.....40170
180 .....39705, 39709, 40170

**42 CFR**

405.....39828
410.....39828
412.....39828
413.....39828
482.....39828
485.....39828
486.....39828
**Proposed Rules:**
405.....40372
410.....40372
411.....40372
414.....40372
415.....40372

**44 CFR**

**Proposed Rules:**
204.....39715

**46 CFR**

**Proposed Rules:**
221.....40664

**47 CFR**

73.....39682, 39683

**Proposed Rules:**
64.....40666
73 .....39726, 39727, 40174

**48 CFR**

**Proposed Rules:**
31.....40838

**49 CFR**

232.....39683
541.....40622

**Proposed Rules:**
71.....40666
171.....40174
173.....40174
174.....40174
175.....40174
176.....40174
177.....40174
178.....40174
571.....40174

**50 CFR**

635.....40151

**Proposed Rules:**
223.....40176
622.....40187
660.....40188

## 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 AUGUST 3, 2001

**FEDERAL COMMUNICATIONS COMMISSION**

Common carrier services:
- Personal communications services—
  - Narrowband rules; modifications; competitive bidding; published 6-4-01

**TRANSPORTATION DEPARTMENT**

**Coast Guard**

Ports and waterways safety:
- St. Clair River, MI; safety zone; published 8-2-01

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:
- Airbus; published 6-29-01
- Boeing; published 6-29-01

**TRANSPORTATION DEPARTMENT**

**National Highway Traffic Safety Administration**

Motor vehicle theft prevention standards:
- High theft vehicle lines, FY 2002; final listing; published 8-3-01

**TREASURY DEPARTMENT**

**Internal Revenue Service**

Income taxes:
- Recognition of gain on certain distributions of stock or securities in connection with an acquisition; published 8-3-01

## RULES GOING INTO EFFECT AUGUST 4, 2001

**TRANSPORTATION DEPARTMENT**

**Coast Guard**

Drawbridge operations:
- Iowa and Illinois; published 7-11-01

## COMMENTS DUE NEXT WEEK

**AGRICULTURE DEPARTMENT**

**Agricultural Marketing Service**

Oranges, grapefruit, tangerines, and tangelos grown in—
- Florida; comments due by 8-10-01; published 7-31-01

**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

## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. This list is also

available online at http://www.nara.gov/fedreg.

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.

**S. 360/P.L. 107–21**

To honor Paul D. Coverdell. (July 26, 2001; 115 Stat. 194)

**S. 1190/P.L. 107–22**

To amend the Internal Revenue Code of 1986 to rename the education individual retirement accounts as the Coverdell education savings accounts. (July 26, 2001; 115 Stat. 196)

**Last List July 26, 2001**

## Public Laws Electronic Notification Service (PENS)

**PENS** is a free electronic mail notification service of newly enacted public laws. To subscribe, go to http://hydra.gsa.gov/archives/publaws-l.html or send E-mail to **listserv@listserv.gsa.gov** with the following text message:

**SUBSCRIBE PUBLAWS-L** Your Name.

**Note:** This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.