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# Federal Register

Thursday
June 24, 1999

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## 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.

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# Presidential Documents

**Title 3—**

## The President

**Presidential Determination No. 99–29 of June 17, 1999**

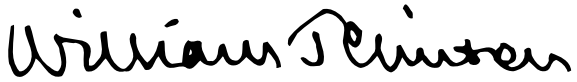
## Suspension of Limitation Under the Jerusalem Embassy Act

**Memorandum for the Secretary of State**

Pursuant to the authority vested in me as President by the Constitution and the laws of the United States, including section 7(a) of the Jerusalem Embassy Act of 1995 (Public Law 104–45) (the ''Act''), I hereby determine that it is necessary to protect the national security interests of the United States to suspend for a period of 6 months the limitation set forth in section 3(b) of the Act.

You are hereby authorized and directed to transmit this determination to the Congress, accompanied by a report in accordance with section 7(a) of the Act, and to publish the determination in the **Federal Register.**

This suspension shall take effect after transmission of this determination and report to the Congress.



THE WHITE HOUSE,
*Washington, June 17, 1999.*

[FR Doc. 99–16233
Filed 6–23–99; 8:45 am]
Billing code 4710–10–M

# Rules and Regulations

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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.

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 923

**[Docket No. FV99–923–1 IFR]**

### Sweet Cherries Grown in Designated Counties in Washington; Change in Pack Requirements

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

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

**SUMMARY:** This rule changes the pack requirements currently prescribed under the Washington cherry marketing order. The marketing order regulates the handling of sweet cherries grown in designated counties in Washington and is administered locally by the Washington Cherry Marketing Committee (Committee). This rule establishes two additional row count/row size designations for Washington cherries when containers destined for fresh market channels are marked with a row count/row size designation. The two additional row count/row size designations are 8 row (8⁴⁄₆₄ inches in diameter) and 8½ row (7⁹⁄₆₄ inches in diameter). This change will allow the Washington cherry industry to further differentiate cherries by row count/row size. The change is intended to provide handlers more marketing flexibility, clarify the choices available to buyers, and improve returns to producers.

**DATES:** Effective June 25, 1999; comments received by August 23, 1999 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Teresa L. Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 134 and Marketing Order No. 923, both as amended (7 CFR part 923), regulating the handling of sweet cherries grown in designated counties in Washington, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

This rule changes the pack requirements currently prescribed under the Washington cherry marketing order. This rule establishes two additional row count/row size designations for Washington cherries when containers destined for fresh market channels are marked with a row count/row size designation.

Section 923.52 of the order authorizes the issuance of regulations for grade, size, quality, maturity, pack, and container for any variety or varieties of cherries grown in any district or districts of the production area during any period or periods. Section 923.53 further authorizes the modification, suspension, or termination of regulations issued under § 923.52.

Minimum grade, size, quality, maturity, container, and pack requirements for cherries regulated under the order are specified in § 923.322. Paragraph (e) of that section provides that when containers of cherries are marked with a row count/row size designation the row count/row size marked shall be one of those shown in Column 1 of the following table and at least 90 percent, by count, of the cherries in any lot shall be not smaller than the corresponding diameter shown in Column 2 of the table: *Provided*, That the content of individual containers in the lot are not limited as to the percentage of undersize; but the total of

undersize of the entire lot shall be within the tolerance specified.

TABLE

| Column 1, row count/row size | Column 2 diameter (inches) |
|---|---|
| 9 | 75/64 |
| 9½ | 71/64 |
| 10 | 67/64 |
| 10½ | 64/64 |
| 11 | 61/64 |
| 11½ | 57/64 |
| 12 | 54/64 |

The Committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Washington cherries which have been issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews Committee recommendations and information submitted by the Committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

At its May 13, 1999, meeting, the Committee unanimously recommended changing the pack requirements currently prescribed under the Washington cherry marketing order. The Committee recommended establishing two additional row count/row size designations for Washington cherries when containers are marked with a row count/row size designation. The additional row count/row size designations recommended are 8 row (84/64 inches in diameter) and 8½ row (79/64 inches in diameter). The Committee requested that this rule be effective as soon as possible as shipments of the 1999 Washington cherry crop may begin as early as mid-June.

When the current row count/row sizes were modified in 1993, cherry sizes as large as 8 and 8½ row were not produced. The new varieties developed since that time tend to size larger. Further differentiation by row count/row size will allow handlers and producers to benefit from the extra effort and costs involved in producing and marketing larger sized cherries, and accrue the premium prices generally received for large-sized cherries.

Price data during peak shipment periods shows an increase of $2 per container for each row count/row size designation increase. Therefore, it is anticipated that 8 row and 8½ row cherries will receive an additional $2 and $4 per container, respectively, over 9 row cherries. While the current percentage of larger cherries produced and shipped is small, the production of large-sized cherry varieties is trending upward.

The largest row count/row size now designated is 9 row (75/64 inches in diameter). Hence, handlers marketing cherries larger than 9 row are not able to differentiate their pack to receive the higher prices generally received for larger-sized cherries. The Committee believes that differentiation by row count/row size will provide handlers more marketing flexibility and clarify the choices available to buyers. By allowing handlers the opportunity to differentiate these cherries with the larger row count/row size designations, the Committee believes that producers' returns will improve.

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

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

There are approximately 70 handlers of Washington cherries who are subject to regulation under the marketing order and approximately 1,100 cherry producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Currently, about 93 percent of the Washington cherry handlers ship under $5,000,000 worth of cherries and 7 percent ship over $5,000,000 worth on an annual basis. In addition, based on acreage, production, and producer prices reported by the National Agricultural Statistics Service, and the total number of Washington cherry producers, the average annual grower revenue is approximately $100,000. In view of the foregoing, it can be concluded that the majority of handlers and producers of Washington cherries may be classified as small entities.

This rule changes the pack requirements currently prescribed under the Washington cherry marketing order by establishing two additional row count/row size designations for Washington cherries when containers are marked with a row count/row size designation.

At its May 13, 1999, meeting, the Committee unanimously recommended changing the pack requirements currently prescribed under the Washington cherry marketing order. The Committee recommended establishing two additional row count/row size designations for Washington cherries when containers destined for fresh market channels are marked with a row count/row size designation. The additional row count/row size designations recommended are 8 row (84/64 inches in diameter) and 8½ row (79/64 inches in diameter).

When the current row count/row sizes were modified in 1993, cherry sizes as large as 8 and 8½ row were not produced. The new varieties developed since that time tend to size larger. Further differentiation by row count/row size cherries will allow handlers and producers to benefit from the extra effort and costs involved in producing and marketing larger-sized cherries, and accrue the premium prices generally received for large-sized cherries.

Price data for peak shipment periods shows an increase of $2 per container for each row count/row size designation increase. Therefore, it is anticipated that 8 row and 8½ row cherries will receive an additional $2 and $4 per container, respectively, over 9 row cherries. While the current percentage of larger cherries is small, the production of large-sized cherry varieties is trending upward.

The largest row count/row size now designated is 9 row (75/64 inches in diameter). Hence, handlers marketing cherries larger than 9 row are not able to differentiate their pack to receive the higher prices generally received for larger-sized cherries. The Committee believes that differentiation by row count/row size will provide handlers more marketing flexibility and clarify the choices available to buyers. By allowing handlers the opportunity to differentiate these cherries with the larger row count/row size designations, the Committee believes that producers' returns will improve.

The Committee anticipates that this rule will not negatively impact small businesses. This rule will allow handlers to market larger cherries in containers designated with the larger row counts/row sizes. Accurate

identification of the sizes packed in the containers is expected to benefit buyers. Further, this rule will allow handlers greater flexibility in marketing the Washington cherry crop.

The Committee did not discuss any alternatives to this rule, except not to allow the larger row count/row size designations for larger cherries. This was not acceptable because producers and handlers would not be able to reap the benefits expected from further differentiation of the larger sizes.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Washington cherry industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the May 13, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of 15 members, of which 5 are handlers and 10 are producers. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

This rule invites comments on changes to the pack requirements currently prescribed under the Washington cherry marketing order. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule changes the pack requirements for Washington cherries which should be in effect as soon as possible as 1999–2000 season shipments of Washington cherries are expected to begin shortly, and this action should apply to as much of the season's shipments as possible; (2) this rule was unanimously recommended by the Committee at an open public meeting and all interested persons had an opportunity to express their views and provide input; (3) Washington cherry handlers are aware of this rule and need no additional time to comply with the relaxed requirements; and (4) this rule provides a 60-day comment period, and any comments received will be considered prior to finalization of this rule.

**List of Subjects in 7 CFR Part 923**

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 923 is amended as follows:

## PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

1. The authority citation for 7 CFR Part 923 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 923.322 is amended by revising paragraph (e) to read as follows:

**§ 923.322 Washington Cherry Regulation 22.**

* * * * *

(e) *Pack.* (1) When containers of cherries are marked with a row count/row size designation the row count/row size marked shall be one of those shown in Column 1 of the following table and at least 90 percent, by count, of the cherries in any lot shall be not smaller than the corresponding diameter shown in Column 2 of such table: *Provided,* That the content of individual containers in the lot are not limited as to the percentage of undersize; but the total of undersize of the entire lot shall be within the tolerance specified.

TABLE

| Column 1, row count/row size | Column 2 diameter (inches) |
|---|---|
| 8 | 84/64 |
| 8½ | 79/64 |
| 9 | 75/64 |
| 9½ | 71/64 |
| 10 | 67/64 |
| 10½ | 64/64 |
| 11 | 61/64 |
| 11½ | 57/64 |
| 12 | 54/64 |

* * * * *

Dated: June 18, 1999.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 99–16055 Filed 6–23–99; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–SW–26–AD; Amendment 39–11205; AD 99–11–04]**

**RIN 2120–AA64**

## Airworthiness Directives; Sikorsky Aircraft Model S–76A Helicopters

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

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

**SUMMARY:** This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 99–11–04 which was sent previously to all known U.S. owners and operators of Sikorsky Aircraft Model S–76A helicopters by individual letters. This AD requires, before further flight, either revising the flight manual to show reduced single-engine rotorcraft performance or determining if an AC generator interlock system is installed. If an interlock system is installed, the flight manual revision is not required. This amendment is prompted by the discovery that Sikorsky Aircraft Model S–76A helicopters with Turbomeca Arriel 1S1 engines may fail to achieve the specified single-engine rotorcraft performance if an AC generator interlock system is not installed. The actions specified by this AD are intended to prevent the inability of the rotorcraft to achieve certain published one-engine-inoperative performance.

**DATES:** Effective July 9, 1999, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 99–11–04, issued on May 13, 1999, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before August 23, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–26–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

**FOR FURTHER INFORMATION CONTACT:** Robert Mann, Aerospace Engineer,

Boston Aircraft Certification Office, ANE–150, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7190, fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:** On May 13, 1999, the FAA issued Priority Letter AD 99–11–04, applicable to Sikorsky Aircraft Model S–76A helicopters, which requires, before further flight, either revising the flight manual to show reduced single-engine rotorcraft performance or determining if an AC generator interlock system is installed. If an interlock system is installed, the flight manual revision is not required. That action was prompted by the discovery that Sikorsky Aircraft Model S–76A helicopters with Turbomeca Arriel 1S1 engines may fail to achieve the specified single-engine rotorcraft performance if an AC generator interlock system is not installed. This condition, if not corrected, could result in the inability of the rotorcraft to achieve certain published one-engine-inoperative performance.

Since the unsafe condition described is likely to exist or develop on other Sikorsky Aircraft Model S–76A helicopters of the same type design, the FAA issued Priority Letter AD 99–11–04 to reduce the published Category ''A'' maximum takeoff and landing gross weights and single-engine forward climb performance limitations of the Rotorcraft Flight Manual (RFM), when an AC generator interlock system is not installed. The AD requires, before further flight, revising the RFM to publish reduction of Category ''A'' weight by 150 pounds and single-engine performance by 50 feet per minute, or determining whether an AC generator interlock system has been installed. If the AC generator interlock system is not installed, the revision to the RFM is required. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, revising the flight manual to show reduced single-engine rotorcraft performance or determining if an AC generator interlock system is installed is required before further flight, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on May 13, 1999, to all known U.S. owners and operators of Sikorsky Aircraft Model S–76A helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons. There is a minor editorial change in this published version of the priority letter AD; the FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 5 helicopters of U.S. registry will be affected by this AD, that it will take approximately 0.5 work hour per helicopter to revise the RFM, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $150 to revise the RFM on the entire fleet.

### Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–SW–26–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein 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. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**AD 99–11–04 Sikorsky Aircraft Corporation:** Amendment 39–11205. Docket No. 99–SW–26–AD.

*Applicability:* Sikorsky Model S–76A helicopters with Turbomeca Arriel 1S1 engines installed in accordance with Supplemental Type Certificate SH568NE, including drawing number 76070–30601.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified,

altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Before further flight, unless accomplished previously.

To reduce the published Category ''A'' maximum takeoff and landing gross weights and single-engine forward climb performance limitations of the Rotorcraft Flight Manual (RFM), when an AC generator interlock system is not installed, accomplish the following:

(a) Insert Sikorsky Model S–76A RFM Supplement (RFMS) No. 29B, Temporary Revision 1, dated April 9, 1999, into RFMS No. 29B, dated December 21, 1993, or

(b) Determine if the AC generator interlock relays are installed by conducting the following inspection:

(1) Uncover the No. 2 Relay Panel, located in the right side of the cockpit overhead. This panel is also referred to as the right-hand panel.

(2) Inspect for the presence of the AC generator interlock relays identified as K43 and K44 (two relays) or K46, K47, and K48 (three relays).

**Note 2:** For S–76A helicopters, serial numbers (S/N's) 760001 through 760237, the AC generator interlock relays are wired through splice groups to the K31, K32, K11, and K13 relays. For S–76A helicopters, S/N's 760238 and higher, the AC generator interlock relays are wired through splice groups to the K11 and K13 relays. Depending on how and when each helicopter was modified, the labels on these relays could be K43 and K44 (two relays) or K46, K47, and K48 (three relays).

**Note 3:** Sikorsky Aircraft Corporation Alert Service Bulletin 76–77–4A, Revision A, dated May 5, 1999, pertains to the subject of this AD.

(3) If the AC generator interlock relays are installed, no further action is required by this AD.

(4) If the AC generator interlock relays are not installed, insert Sikorsky S–76A RFMS No. 29B, Temporary Revision 1, dated April 9, 1999, into RFMS No. 29B, dated December 21, 1993.

(c) This AD revises the Limitations Section of the RFM for helicopters on which the AC generator interlock relays are not installed by inserting a new RFMS revision limiting Category ''A'' gross weight and reducing published climb performance.

(d) Remove Sikorsky Model S–76A RFMS No. 29B, Temporary Revision 1, dated April 9, 1999, inserted into RFMS No. 29B, dated December 21, 1993, from the RFM upon installation of one of the following, as applicable:

(1) For Model S–76A helicopters, S/N's 760001 through 760237, AC generator interlock kit (kit), part number (P/N) 33776–84790–012.

(2) For Model S–76A helicopters, S/N's 760238 and higher, kit, P/N 33776–84790–011.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Boston Aircraft Certification Office.

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Boston Aircraft Certification Office.

(f) 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 helicopter to a location where the requirements of this AD can be accomplished.

(g) This amendment becomes effective on July 9, 1999, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 99–11–04, issued May 13, 1999, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on June 15, 1999.

**Henry A. Armstrong,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 99–15901 Filed 6–23–99; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**RIN 2120–AA64**

**[Docket No. 98–SW–71–AD; Amendment 39–11204; AD 99–13–11]**

## Airworthiness Directives; Robinson Helicopter Company (Robinson) Model R44 Helicopters

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to Robinson Model R44 helicopters, that requires installing a shutoff clamp on the auxiliary fuel tank sump drain tube (drain tube) and a placard decal to alert operators as to the proper use of the auxiliary fuel tank drain. This amendment is prompted by a report of fuel leaking from a drain tube opening in the area of the horizontal and vertical firewalls. The actions specified by this AD are intended to prevent fuel leaks from the drain tube that could cause a fire and subsequent loss of control of the helicopter.

**EFFECTIVE DATE:** July 29, 1999.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Bumann, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5265; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Robinson Model R44 helicopters was published in the **Federal Register** on March 22, 1999 (64 FR 13732). That action proposed to require installation of a shutoff clamp on the drain tube to prevent fuel leakage and a placard decal to alert operators as to the proper use of the auxiliary fuel tank drain.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed with only minor editorial changes that will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 200 helicopters of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. The manufacturer has indicated that each operator will be provided parts at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $12,000.

The regulations adopted herein 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. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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 FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

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

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**AD 99–13–11 Robinson Helicopter Company:** Amendment 39–11204. Docket No. 98–SW–71–AD.

*Applicability:* Model R44 helicopters, Serial Numbers 0002 through 0529 except 0440, 0485, 0512, 0515, 0519, 0526, 0527, and 0528, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters 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:* Within 100 hours time-in-service or 3 calendar months, whichever occurs first.

To prevent fuel leaks from the auxiliary fuel tank sump drain, which could cause a fire and subsequent loss of control of the helicopter, accomplish the following:

(a) Install a shutoff clamp, part number (P/N) D663–1, by sliding it onto the auxiliary fuel tank sump drain tube, P/N A729–7, as shown in Figure 1.

(b) Install placard decal, P/N A654–93, as shown in Figure 1.

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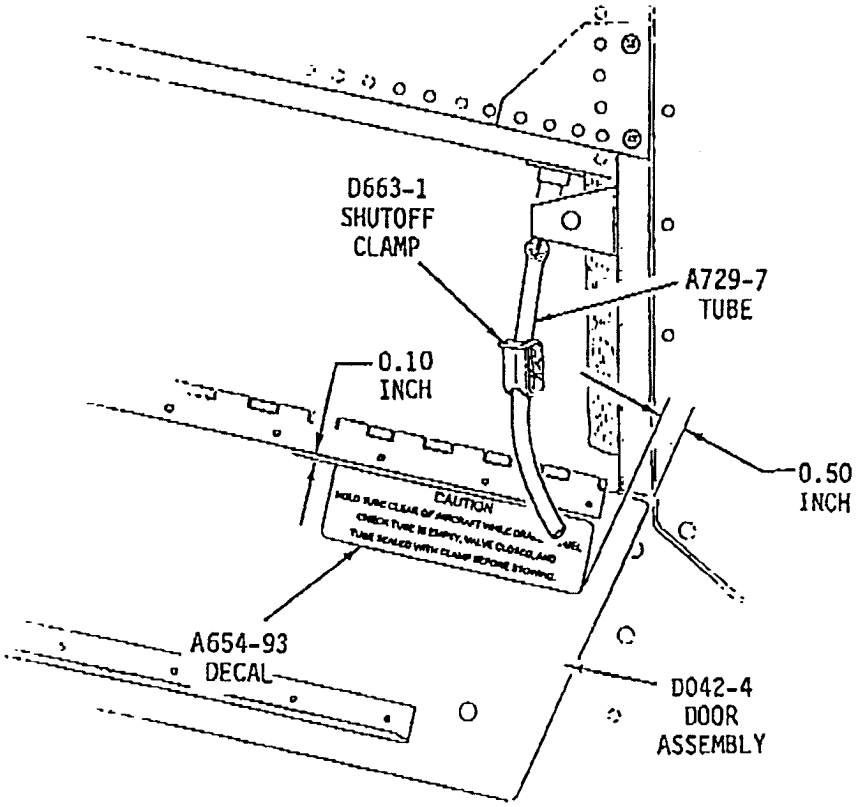


**Figure 1**

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(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. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send

it to the Manager, Los Angeles Aircraft Certification Office.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(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 helicopter to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on July 29, 1999.

Issued in Fort Worth, Texas, on June 15, 1999.

**Henry A. Armstrong,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 99–15903 Filed 6–23–99; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–SW–23–AD; Amendment 39–11207; AD 99–13–12]**

**RIN 2120–AA64**

## Airworthiness Directives; Bell Helicopter Textron Canada Model 206L, 206L–1, 206L–3, and 206L–4 Helicopters

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

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

**SUMMARY:** This amendment supersedes an existing priority letter airworthiness directive (AD), applicable to Bell Helicopter Textron Canada (BHTC) Model 206L, 206L–1, 206L–3, and 206L–4 helicopters, that currently requires visual inspections and visual checks at specified time intervals, and a fluorescent-penetrant inspection (FPI) for any cracks in the tailboom skins around the horizontal stabilizer openings. Inserting a copy of the priority letter AD into the Rotorcraft Flight Manual (RFM) is also required. This amendment revises the inspection procedures and specified time intervals mandated by the priority letter AD. This amendment is prompted by crack growth analysis that indicates the need to detect cracks before they propagate from underneath the horizontal stabilizer supports. The actions specified by this AD are intended to detect a crack in the tailboom skin that could result in separation of the tailboom from the helicopter and subsequent loss of control of the helicopter.

**DATES:** Effective July 9, 1999.

Comments for inclusion in the Rules Docket must be received on or before August 23, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–23–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

**FOR FURTHER INFORMATION CONTACT:** Michael Kohner, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, ASW–170, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5447, fax (817) 222–5783.

**SUPPLEMENTARY INFORMATION:** On January 6, 1999, the FAA issued Priority Letter AD 99–02–01, applicable to BHTC Model 206L, 206L–1, 206L–3, and 206L–4 helicopters, to require visual inspections and visual checks at specified time intervals, and a FPI for any cracks in the tailboom skins around the horizontal stabilizer openings. Inserting a copy of the priority letter AD into the RFM is also required. That action was prompted by 7 reports of fatigue cracks that propagated from the edges of the horizontal stabilizer openings in the tailboom skins. That condition, if not corrected, could result in separation of the tailboom and subsequent loss of control of the helicopter.

Since the issuance of that priority letter AD, further review of crack growth rates has shown that cracks need to be detected before they propagate from underneath the horizontal stabilizer supports. Therefore, this superseding AD requires, at specified time intervals, not just visually inspecting and checking the tailboom skins in the area of the horizontal stabilizer supports, but also removing the horizontal stabilizer supports and visually inspecting the edges of the tailboom skins around the horizontal stabilizer openings for cracks. Removing the horizontal stabilizer supports will allow the detection of cracks at an earlier stage.

Transport Canada, which is the airworthiness authority for Canada, has notified the FAA that an unsafe condition may exist on BHTC Model 206L, 206L–1, 206L–3, and 206L–4 helicopters. Transport Canada advises that cracks were found on the tailboom skins in the area of the horizontal stabilizer.

Bell Helicopter Textron has issued BHTC Alert Service Bulletin No. 206L–98–114, dated November 25, 1998, which specifies a pilot preflight check for cracks in the horizontal stabilizer area before the first flight of each day. Transport Canada classified this service bulletin as mandatory and issued AD No. CF–98–42R1, dated February 16, 1999, which states that a review of crack growth rates indicates the need to detect cracks earlier. In addition to the preflight check for cracks introduced by the service bulletin, the Transport Canada AD requires removing the horizontal stabilizer supports and visually inspecting the tailboom skin underneath the horizontal stabilizer supports at specified time intervals.

These helicopter models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTC Model 206L, 206L–1, 206L–3, and 206L–4 helicopters of the same type designs, this AD supersedes Priority Letter AD 99–02–01 to require:

- Prior to further flight, and thereafter, at intervals not to exceed 10 hours time-in-service (TIS) until a one-time FPI is accomplished, a visual inspection for any crack in the tailboom skins around the horizontal stabilizer supports;
- At intervals not to exceed 5 hours TIS, a visual preflight pilot check for any crack in the tailboom skins around the horizontal stabilizer supports;
- Within 50 hours TIS, a one-time FPI for any crack in the edge of the tailboom skins around the left and right horizontal stabilizer openings on the tailboom; and
- After completion of the one-time FPI, at intervals not to exceed 100 hours TIS, a visual inspection of the entire edge of the horizontal stabilizer opening on both sides of the tailboom for any crack.

The visual check that is required at intervals not to exceed 5 hours TIS may be performed by an owner/operator (pilot), and must be entered into the aircraft records showing compliance with paragraph (b) of this AD in accordance with sections 43.11 and

91.417 (a)(2)(v) of the Federal Aviation Regulations (14 CFR sections 43.11 and 91.417 (a)(2)(v)). This AD allows a pilot to perform this check because it involves only a visual check for cracking in the tailboom skins, and can be performed equally well by a pilot or mechanic. These checks are additional measures to ensure that a crack that is visible without the aid of a magnifying glass has not developed during the time between maintenance inspections.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter, and this AD must be issued immediately. Therefore, a visual inspection to detect any crack using a 10-power or higher magnifying glass is required before further flight and at intervals not to exceed 10 hours TIS until accomplishing the FPI; a visual preflight pilot check for any crack is required at intervals not to exceed 5 hours TIS; a one-time FPI is required within 50 hours TIS; and after completion of the one-time FPI and at intervals not to exceed 100 hours TIS, a visual inspection for cracks around the left and right horizontal stabilizer opening on both sides of the tailboom using a 10-power or higher magnifying glass is required.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 1,546 helicopters of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per helicopter to conduct a FPI; 0.5 work hour to conduct a visual inspection; 0.5 work hour to conduct the repetitive visual check; and 20 work hours to replace the tailboom, if necessary. The average labor rate is $60 per work hour. Required parts will cost approximately $22,000 per tailboom. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $278,280 to conduct the initial fluorescent-penetrant inspections and to conduct one of the inspections and one of the visual checks for the entire fleet; $36,145,480 if it is necessary to replace the tailboom on the entire fleet.

### Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–SW–23–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein 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. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD), Amendment 39–11207, to read as follows:

**AD 99–13–12 Bell Helicopter Textron Canada:** Amendment 39–11207. Docket No. 99–SW–23–AD. Supersedes Priority Letter AD 99–02–01, Docket No. 98–SW–83–AD.

*Applicability:*

- Model 206L helicopters, serial numbers (S/N) 45004 through 45153, and 46601 through 46617;
- Model 206L–1 helicopters, S/N 45154 through 45790;
- Model 206L–3 helicopters, S/N 51001 through 51613; and
- Model 206L–4 helicopters, S/N 52001 and higher,

with tailboom, part number (P/N) 206–033–004-all dash numbers, installed, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters 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 (f) 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 detect a crack in the tailboom skin and to prevent separation of the tailboom from the helicopter and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, and thereafter, at intervals not to exceed 10 hours time-in-service (TIS) until accomplishing the one-time fluorescent-penetrant inspection (FPI) required by paragraph (c)(2) of this AD,

visually inspect for any crack in the shaded areas shown in Figure 1. Use a 10-power or higher magnifying glass. If any crack is found, replace the tailboom with an airworthy tailboom.

(b) At intervals not to exceed 5 hours TIS, visually conduct a preflight check of the shaded areas shown in Figure 1 for any crack. If any crack is found, replace the tailboom with an airworthy tailboom. The visual check may be performed by an owner/operator (pilot) holding at least a private pilot certificate, and must be entered into the aircraft records showing compliance with paragraph (b) of this AD in accordance with sections 43.11 and 91.417 (a)(2)(v) of the Federal Aviation Regulations (14 CFR sections 43.11 and 91.417 (a)(2)(v)).

(c) Within 50 hours TIS:

(1) Remove all 4 horizontal stabilizer supports, P/N 206–023–100-all dash numbers, from the tailboom and the horizontal stabilizer.

(2) Perform a one-time FPI of the edges of the tailboom skins for any crack around the left and right horizontal stabilizer openings (Figure 1). Remove paint and primer to inspect the edges and exterior skin surface in the skin area at least ¾ inch around the edges of the horizontal stabilizer openings.

(3) If a crack is found, replace the tailboom with an airworthy tailboom.

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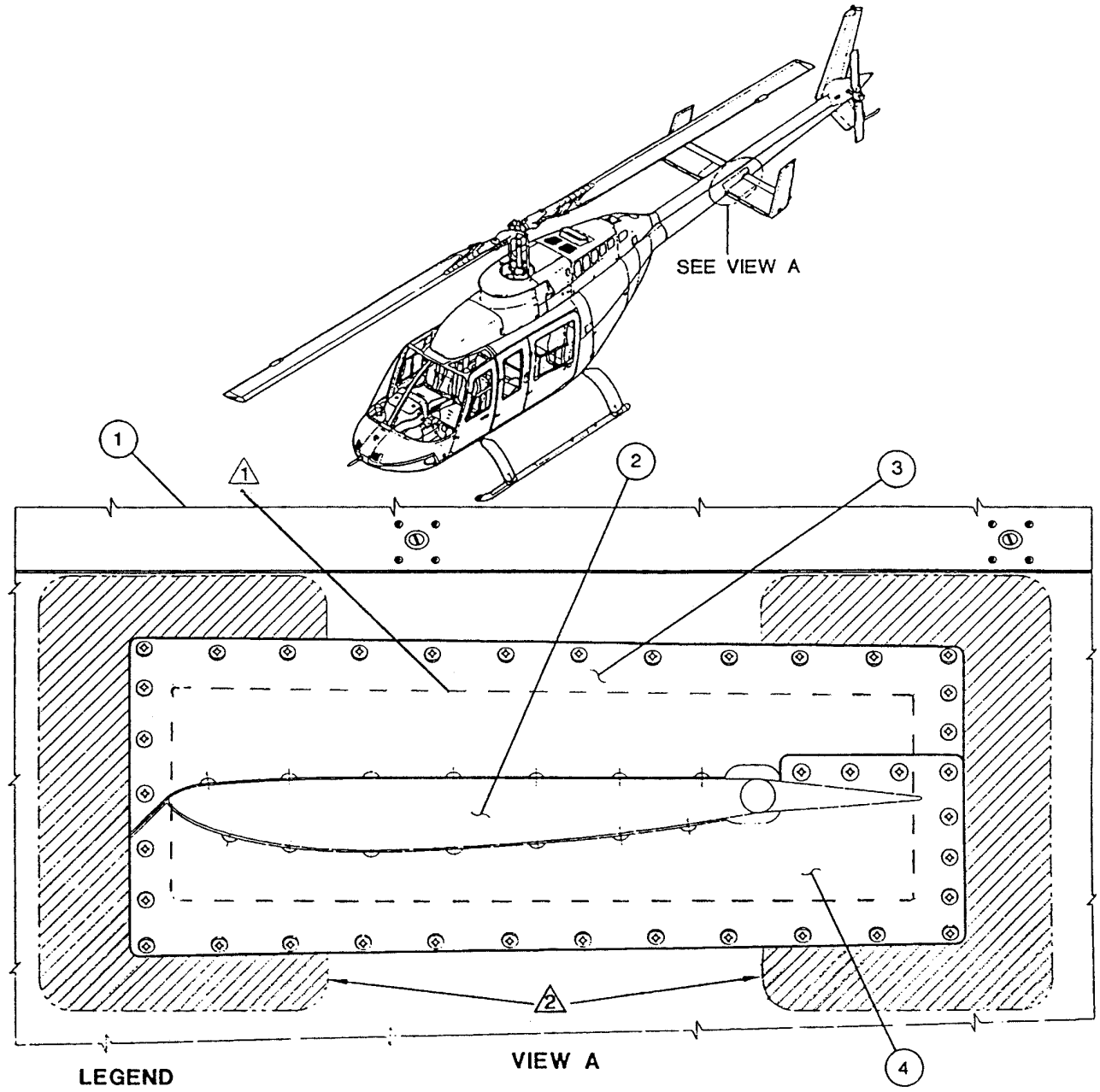


**LEGEND**

1. Tailboom assembly
2. Horizontal stabilizer
3. Upper support
4. Lower support

**NOTES**

(2) Inspect for a crack in these two areas on both sides of the tailboom.

(1) Inspect entire edge of stabilizer opening on both sides of the tailboom.

Figure 1

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(d) At intervals not to exceed 100 hours TIS after completion of the FPI, accomplish the following:

(1) Remove all 4 horizontal stabilizer supports, P/N 206–023–100-all dash numbers, from the tailboom and the horizontal stabilizer.

(2) Visually inspect the entire edge of the horizontal stabilizer opening on both sides of the tailboom for any crack using a 10-power or higher magnifying glass.

(3) If any crack is found, replace the tailboom with an airworthy tailboom.

(e) Insert a copy of this AD into the Rotorcraft Flight Manual.

(f) 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, Rotorcraft Certification Office, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

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

(g) Special flight permits may be issued for a one-time flight, not to exceed 5 hours TIS and a maximum of one landing, in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished. The visual preflight check required by paragraph (b) must be accomplished prior to making a one-time flight.

(h) This amendment becomes effective on July 9, 1999.

**Note 3:** The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–98–42R1, dated February 16, 1999.

Issued in Fort Worth, Texas, on June 16, 1999.

**Henry A. Armstrong,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 99–15925 Filed 6–23–99; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Highway Administration

## 23 CFR Part 655

**[FHWA Docket No. FHWA–97–2353; 96–20]**

**RIN 2125–AD63**

## National Standards for Traffic Control Devices; Metric Conversion

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule adopts as final, with changes, the interim rule concerning national standards for traffic control devices, metric conversion, published on Tuesday, June 11, 1996. This document makes minor changes to certain regulatory citations and corrects the titles of certain publications incorporated by reference.

**DATES:** This final rule is effective June 24, 1999. The incorporation by reference of certain publications listed in the regulations was reapproved by the Director of the Federal Register as of June 24, 1999.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ernest Huckaby, Office of Transportation Operations (HOTO), (202) 366–9064, or Mr. Raymond Cuprill, Office of the Chief Counsel (202) 366–1377, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

You may download an electronic copy of this document by using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

The text for Part 1 of the MUTCD is available from the FHWA Office of Transportation Operations (HOTO or from the FHWA Home Page at the URL: *http://www.ohs.fhwa.dot.gov/devices/mutcd.html*.

### Background

Section 1211(d) of the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, 112 Stat. 107) removed the target date for metric conversion, thereby allowing the State departments of transportation (DOTs) the option of converting to the International System of Measurements (SI). Section 205(c)(2) of the National Highway System Designation Act of 1995 (Pub. L. 104–59, 109 Stat. 568) was amended by striking the language ''before September 30, 2000,'' which removes the mandate that States convert to SI. Most of the State DOTs have substantially converted their project development and construction processes to SI. Full conversion by all the State DOTs remains an FHWA goal since it will improve efficiency within the highway construction industry by reducing translation errors and enabling the contractors, consultants, fabricators and materials suppliers to utilize a single system of units. The FHWA believes that it is in the best interest of the highway community to expedite the metrication process and ensure compatibility within the highway industry and with other industries. Reversion to inch-pound units by some States will perpetuate a confusing mix of measurement systems.

The FHWA is adopting, as its policy for the design of traffic control devices for use on all roads open to public travel, two American Association of State Highway and Transportation Officials' (AASHTO) publications: ''Guide to Metric Conversion, AASHTO, 1993,'' and ''Traffic Engineering Metric Conversion Factors, 1993—Addendum to the Guide to Metric Conversion, AASHTO, October 1993.''

The FHWA's Metric Conversion Policy, published at 57 FR 24843 on June 11, 1992, requires that newly authorized Federal-aid construction contracts be in metric units only by September 30, 1996. The National Highway System Designation Act of 1995 postponed this requirement until September 30, 2000. Many States have progressed in their conversion activities to a point that it is impractical not to continue the transition into full metric use. Because of the long lead times required for highway construction projects, planning for projects is already underway and, in fact, the majority of the Federal-aid highway construction program nationwide is currently being constructed in metric units. It is the intent of this rulemaking to assure the States and other FHWA partners that the metric conversions used to formulate their plans are consistent nationwide.

The traffic control device design and applications standards have been adopted by the FHWA for use on all streets and highways open to public travel and are incorporated by reference in 23 CFR Part 655, subpart F. The current design standards are on file at the Office of the Federal Register in Washington, D.C. and are available for inspection from the FHWA Washington Headquarters and all FHWA Division and Resource Centers as prescribed in 49 CFR Part 7. Copies of the current AASHTO publications are also available for purchase from the American Association of State Highway and

Transportation Officials, Suite 249, 444 North Capitol Street NW., Washington, D.C. 20001.

The American Association of State Highway and Transportation Officials (AASHTO) is an organization which represents the 52 State highway and transportation agencies (including the District of Columbia and Puerto Rico). Its members consist of the duly constituted heads and other chief officials of those 52 agencies. The Secretary of the United States Department of Transportation (DOT) is an ex officio member, and DOT officials participate in various AASHTO activities as non-voting representatives. Among other functions, the AASHTO develops and issues standards, specifications, policies, guides, and related materials for use by the States for highway projects. Many of the standards adopted by the FHWA and incorporated in 23 CFR Part 655 were developed and issued by the AASHTO or by organizations of which it is a major voting member. Revisions made to such documents by the AASHTO are independently reviewed and adopted by the FHWA before they are applied to street and highway projects.

The FHWA initiated a phased five-year plan to convert its activities and business operations to the metric system of weights and measures as required by the Metric Conversion Act of 1975 ((Pub. L. 94–168, 89 Stat. 1007) as amended by sec. 5164 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, 102 Stat. 1107, 1451)) (Metric Act). The TEA–21, section 1211(d), does not change the requirements placed on the FHWA by the Omnibus Trade and Competitiveness Act of 1988. Therefore, the FHWA will continue to use SI in its daily business activities. In keeping with existing policy, correspondence or publications intended for a broad audience which includes the general public may use dual units with the SI value first followed by the inch-pound value in parentheses. All other documents should be in SI only.

The AASHTO developed and published ''Traffic Engineering Metric Conversion Factors, 1993—Addendum to the Guide to Metric Conversion, AASHTO, October 1993,'' listing the conversion values for nationwide uniformity. Through the interim final rule, the FHWA adopted the metric conversion traffic engineering values established by the AASHTO in the publications entitled ''Guide to Metric Conversion, AASHTO, 1993,'' and ''Traffic Engineering Metric Conversion Factors, 1993—Addendum to the Guide to Metric Conversion, AASHTO, October 1993.'' Included are metric values for determining the metric sizes for signs and pavement markings.

The language in the interim final rule cited to 49 CFR Part 7, Appendix D. Please note that the appendices to Part 7 have been removed. Therefore, the new citation has been changed to 49 CFR Part 7.

**Discussion of Comments**

An interim final rule for 23 CFR 655.601 was published on June 11, 1996, at 61 FR 29624. Interested persons were invited to participate in this rulemaking by submitting written comments to FHWA Docket No. 96–20 on or before August 11, 1996. The FHWA has rearranged its docket system to accord with the electronic system adopted by the Department of Transportation. A new docket was established to receive the information with the number FHWA Docket FHWA–97–2353. Material previously submitted to Docket 96–20 was transferred to FHWA–97–2353. Comments were received from three State highway agencies, one local jurisdiction, one association, one traffic consultant, and one safety group. Five of these either favored metric conversion, did not address the issue of AASHTO guidelines, or offered suggestions for improving the guidelines.

Two commenters, Advocates for Highway and Auto Safety (AHAS) and Connecticut Construction Industries Association, Inc. (CCIA), opposed the FHWA's adoption of the AASHTO metric conversion publications as the agency's interim policy for design of traffic control devices without prior notice and the opportunity for comment. These commenters objected to issuance of the interim final rule, alleging that the FHWA has truncated proper rulemaking procedures. The CCIA specifically requests that the FHWA rescind the rule until such time as it is adopted after notice of an opportunity for comment.

The FHWA believes prior notice and opportunity for comment are unnecessary because the interim metric value documents adopted here are functionally equivalent to the English measurements already adopted by the FHWA pursuant to notice and comment procedures in various revisions of the Manual on Uniform Traffic Control Devices (MUTCD) and, at the same time, allow easier and more manageable conversions to metric measurements. In addition, as indicated in the prior notice, we anticipate that the AASHTO metric values adopted here will be used only on an interim basis until the MUTCD is revised to incorporate design values converted to the metric system. This action is expected during 2001.

We also reiterate the prior finding that imposition of notice and comment procedures here would be contrary to the public interest. Adoption as a final rule of the interim metric values provides States and other FHWA partners, including highway construction contractors, with necessary certainty and continuity as they formulate their plans for metric projects. Almost all of the States continued their metric conversion activities to meet the previously established deadline and are either awarding contracts in metric or plan to do so in the near future. Comments of State transportation agencies introduced here support the view that availability of these metric standards will assist States markedly in developing and achieving uniformity in project plans and in adopting metric standards for traffic engineering.

Furthermore, we expect these particular metric values to be used on an interim basis only until the MUTCD with design values converted to the metric system is adopted and published.

Prior notice and opportunity for comment are not required under the Department of Transportation's Regulatory Policies and Procedures because it is not anticipated that such action will result in the receipt of useful information. The FHWA has determined that the AASHTO interim metric values come as close as possible to retaining the English measurements already adopted by the FHWA pursuant to notice and comment rulemaking, and express adoption of these metric values now provides necessary certainty and continuity for States and other FHWA partners, including highway construction contractors. For these reasons, we adhere to the view that, consistent with 5 U.S.C. 553(d)(3), good cause supports the FHWA's action making this final rule effective. In addition, the FHWA believes that this final rule should be effective immediately upon publication.

The APA also allows agencies, upon a finding of good cause, to make a rule effective immediately and avoid the 30-day delayed effective date requirement. 5 U.S.C. 553(d)(3). The FHWA has determined that good cause exists to make this rule effective upon publication because the rule provides information to States for their use in contracting with private contractors for the construction of highways. Making this rule effective upon publication will enable States to begin incorporating metric units now. Furthermore, since this was published as an interim final rule, it is already effective. Therefore, no

good purpose would be served by delaying the effective date of this rule.

In addition to implementing the interim rule as a final rule, the FHWA is making one additional change. The FHWA is eliminating 23 CFR 655.601(e)—Pavement Marking Demonstration Program, FHWA, 23 CFR part 920. Paragraph (e) is a cross reference to 23 CFR part 920 which no longer exists, thereby making paragraph (e) obsolete.

**Review Procedure**

Based on an analysis of public comments received, the FHWA has examined its determination that the AASHTO publications adopted by this rule are acceptable as the basis for the design of signs and pavement markings for streets and highways open to public travel.

**Rulemaking Analyses and Notices**

*Administrative Procedure Act*

The Administrative Procedure Act provides that an agency may dispense with prior notice and opportunity for comment when the agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(3)(B). The FHWA has determined that prior notice and opportunity for comment are unnecessary in the elimination of 23 CFR 655.601(e). Paragraph (e) cross references 23 CFR part 920. The Pavement Marking Demonstration Program expired. The DOT issued an NPRM on May 20, 1992, at 57 FR 21362, giving notice and providing an opportunity for comments. Part 920 was removed in a final rule on December 22, 1992, at 57 FR 60725. Comments regarding a reference to a nonexistent program are unnecessary. Therefore, notice and opportunity for comment are not required.

*Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. As stated previously, the FHWA has determined that the interim metric values selected by the AASHTO documents are functionally equivalent to English system measurements previously adopted by notice and comment rulemaking. It is anticipated that the economic impact of the rulemaking will be minimal. The additional guidance and clarification provided by this final amendment will improve application of traffic control devices at little additional expense to public agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

*Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this action on small entities. This final amendment provides expanded guidance and clarification for traffic control devices. Based on the evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

*Unfunded Mandates Reform Act*

This rule does not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private section, of $100 million or more in any one year (2 U.S.C. 1532).

*Executive Order 12612 (Federalism Assessment)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, which requires that changes to the national standards issued by the FHWA shall be adopted by the States or other Federal agencies within two years of issuance. These amendments are in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of the highway. To the extent that these amendments override any existing State requirements regarding traffic control devices, they do so in the interests of national uniformity.

*Executive Order 12372 (Intergovernmental Review)*

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

*Paperwork Reduction Act*

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

*National Environmental Policy Act*

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

*Regulation Identification Number*

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

**List of Subjects in 23 CFR Part 655**

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs and symbols, and Traffic regulations.

Accordingly, the FHWA hereby adopts as final its interim final rule amending 23 CFR part 655 published at 61 FR 29624 on June 11, 1996, with changes as set forth below:

## PART 655—TRAFFIC OPERATIONS

1. The authority citation for part 655 continues to read as follows:

**Authority:** 23 U.S.C. 101(a), 104, 105, 109(d), 114(a), 135, 217, 307, 315, and 402(a); 23 CFR 1.32; and 49 CFR 1.48(b).

### Subpart F—[Amended]

2. In § 655.601, revise paragraphs (c) and (d), and remove paragraph (e), to read as follows:

**§ 655.601 Purpose.**

* * * * *

(c) Guide to Metric Conversion, AASHTO, 1993. This publication is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and is on file at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. This document is available for inspection as provided in 49 CFR part 7. It may be purchased from the American Association of State Highway and Transportation Officials, Suite 249, 444 North Capitol Street, NW., Washington, DC 20001.

(d) Traffic Engineering Metric Conversion Factors, 1993—Addendum to the Guide to Metric Conversion, AASHTO, October 1993. This publication is incorporated by reference

in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and is on file at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. This document is available for inspection as provided in 49 CFR part 7. It may be purchased from the American Association of State Highway and Transportation Officials, Suite 249, 444 North Capitol Street, NW., Washington, DC 20001.

Issued on: June 17, 1999.

**Gloria J. Jeff,**

*Federal Highway Deputy Administrator.*

[FR Doc. 99–16027 Filed 6–23–99; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 5

**[Docket No. FR–4321–F–06]**

**RIN 2501–AC49**

## Uniform Financial Reporting Standards for HUD Housing Programs; Technical Amendment

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

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

**SUMMARY:** This final rule makes a technical amendment to HUD's regulations on Uniform Financial Reporting Standards, published on September 1, 1998. The amendment will provide a delayed submission date for the first annual financial report required by all multifamily entities subject to these standards. The delayed submission date is only for the first year of compliance with HUD's uniform financial reporting standards.

**DATES:** Effective July 26, 1999.

**FOR FURTHER INFORMATION CONTACT:** For further information contact James Martin, Real Estate Assessment Center, Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington, DC 20410; telephone Customer Service Center 1–888–245–4860. Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at 1–800–877–8399. (Both telephone numbers are toll free numbers).

**SUPPLEMENTARY INFORMATION:** On September 1, 1998 (63 FR 46582), HUD published a final rule that established uniform annual financial reporting standards for HUD's Public Housing, Section 8 housing, and multifamily insured housing programs. The rule provides that the financial information already required to be submitted to HUD on an annual basis under these programs must be submitted electronically to HUD and must be prepared in accordance with generally accepted accounting principles.

The September 1, 1998 final rule also established annual financial report filing dates. The rule provides for all covered entities an annual financial report submission date that is 60 days after the end of a covered entity's fiscal year. For the first year of compliance with the new standards, the September 1, 1998 rule provided an April 30, 1999 annual financial report submission date for those entities that are:

(1) Owners of housing assisted under Section 8 project-based housing assistance payments programs, described in § 5.801(a)(3) of the new rule; or

(2) Owners of multifamily projects receiving direct or indirect assistance from HUD, or with mortgages insured, coinsured, or held by HUD, including but not limited to housing under certain HUD programs described in § 5.801(a)(4) of the new rule; and

(3) Have fiscal years ending December 31, 1998.

The majority of non-public housing entities covered by this rule fall into the category of entities that will have reports due by April 30, 1999. (Note that for public housing agencies (PHAs), the rule provides that compliance with the uniform financial reporting standards begins for PHAs with fiscal years ending September 30, 1999.)

On January 11, 1999 (64 FR 1504), HUD amended the September 1, 1998 rule to change the April 30, 1999 due date to June 30, 1999, to provide additional time for participants (subject to the April 30, 1999 report deadline) to convert to the new reporting system and to complete the first annual financial report.

All entities subject to HUD's uniform financial reporting requirements, (including those entities provided the deferred date of June 30, 1999) advise of the necessity for additional time for successful conversion to the new reporting system. For this first year with HUD's new financial reporting system, HUD has agreed to provide additional time. This technical amendment provides for delayed report submission dates as shown in the regulatory text.

### Other Matters

*Justification for Final Rulemaking*

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1). The Department finds that good cause exists to publish this final rule for effect without first soliciting public comment, in that prior public procedure is unnecessary. Public procedure is unnecessary because this final rule simply makes a technical amendment to its uniform financial reporting standards regulations to provide, for covered entities, for a delayed submission date for the first financial report due under HUD's uniform financial reporting standards. HUD acknowledges that conversion to the new reporting system and completion of the required report involves more time than originally contemplated for these entities. The regulatory amendment made by this rule, therefore, alleviates a burden for these entities. No policies or standards are changed by this rulemaking.

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule only makes a technical amendment to existing regulations by changing a reporting deadline for the first year of compliance with HUD's uniform financial reporting standards. Although this change alleviates a burdensome requirement for covered entities and the covered entities include small entities, the rulemaking nevertheless does not result either adversely or beneficially in any significant economic impact on a substantial number of small entities.

*Environmental Impact*

This final rule is exempt from the environmental review procedures under HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) because of the exemption under § 50.19(c)(1). This final rule only makes a technical correction to existing regulations.

*Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has

determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

*Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance numbers for the programs that would be affected by this rule are:

14.126—Mortgage Insurance—Cooperative Projects (Section 213)
14.129—Mortgage Insurance—Nursing Homes, Intermediate Care Facilities, Board and Care Homes and Assisted Living Facilities (Section 232)
14.134—Mortgage Insurance—Rental Housing (Section 207)
14.135—Mortgage Insurance—Rental and Cooperative Housing for Moderate Income Families and Elderly, Market Rate Interest (Sections 221(d) (3) and (4))
14.138—Mortgage Insurance—Rental Housing for Elderly (Section 231)
14.139—Mortgage Insurance—Rental Housing in Urban Areas (Section 220 Multifamily)
14.157—Supportive Housing for the Elderly (Section 202)
14.181—Supportive Housing for Persons with Disabilities (Section 811)
14.188—Housing Finance Agency (HFA) Risk Sharing Pilot Program (Section 542(c))
14.850—Public Housing
14.851—Low Income Housing—Homeownership Opportunities for Low Income Families (Turnkey III)
14.852—Public Housing—Comprehensive Improvement Assistance Program
14.855—Section 8 Rental Voucher Program
14.856—Lower Income Housing Assistance Program—Section 8 Moderate Rehabilitation
14.857—Section 8 Rental Certificate Program
14.859—Public Housing—Comprehensive Grant Program

**List of Subjects in 24 CFR Part 5**

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low- and moderate-income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, title 24 of the CFR is amended as follows:

## PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for 24 CFR part 5 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), unless otherwise noted.

2. Paragraph (c) of § 5.801 is revised to read as follows;

**§ 5.801 Uniform financial reporting standards.**

* * * * *

(c) *Annual financial report filing dates.* (1) The financial information to be submitted to HUD in accordance with paragraph (b) of this section, must be submitted to HUD annually, no later than 60 days after the end of the fiscal year of the reporting period, and as otherwise provided by law.

(2) For entities listed in paragraphs (a) (3) and (4) of this section, the first annual financial report shall be due on the date provided in this paragraph (2), or at such later date that HUD may provide through notice. This delayed submission date is only for the first year of compliance with the requirements of this section:

(i) For entities with fiscal years ending December 31, 1998, the first annual financial report shall be due August 31, 1999;

(ii) For entities with fiscal years ending in January through April 1999, the first annual financial report shall be due August 31, 1999;

(iii) For entities with fiscal years ending in May through November 1999, the first annual financial report shall be due 120 days after the end of the applicable fiscal year end date.

* * * * *

Dated: June 18, 1999.

**William C. Apgar,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 99–16134 Filed 6–21–99; 4:34 pm]

BILLING CODE 4210–27–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 761

[OPPTS–66009E; FRL–6072–4]

RIN 2070–AC01

## Technical and Procedural Amendments to TSCA Regulations—Disposal of Polychlorinated Biphenyls (PCBs)

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

**ACTION:** Final rule; technical and procedural amendments.

**SUMMARY:** The Environmental Protection Agency published in the **Federal Register** of June 29, 1998 a document amending the regulations affecting disposal of polychlorinated biphenyls (PCBs). EPA has identified several technical errors in that document. This rule corrects those errors. In addition, this rule establishes procedures for requesting an approval for risk-based sampling, cleanup, storage, or disposal of PCB remediation waste, and for risk-based decontamination or sampling of decontaminated material, where those activities occur in more than one EPA Region.

**DATES:** This rule is effective June 24, 1999. In accordance with 40 CFR 23.5, this rule is promulgated for purposes of judicial review at 1 p.m. eastern standard time on July 8, 1999.

**FOR FURTHER INFORMATION CONTACT:** Christine Augustiniak, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E-543B, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460, (202) 554–1404, TDD (202) 544–0551, e-mail: TSCA-Hotline@epa.gov.

For technical information contact: Julie Simpson, Attorney Advisor, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington DC 20460; telephone number: 202-260-7873; fax number: 202-260-1724; e-mail address: simpson.julie@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. Important Information

*A. Does this Notice Apply to You?*

You may be affected by this notice if you manufacture, process, distribute in commerce, use, or dispose of PCBs or materials containing PCBs. Regulated categories and entities may include, but are not limited to:

| Category | Examples of Regulated Entities |
|---|---|
| Industry | Chemical manufacturers<br>Electro-industry manufacturers<br>End-users of electricity<br>PCB waste handlers (such as storage facilities, landfills, and incinerators)<br>Waste transporters<br>General contractors |
| Utilities and rural electric cooperatives. | Electric power and light companies |
| Individuals, Federal, State, and municipal governments. | Individuals or agencies which own, manufacture, process, distribute in commerce, use, or dispose of PCBs |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether you or your business is regulated by this action, you should carefully examine the applicability criteria in 40 CFR Part 761. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

*B. How Can I Get Additional Information or Copies of Support Documents?*

1. *Electronically*. You may obtain electronic copies of this document and various support documents from the EPA Home page at the Federal Register - Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

2. *In person*. The official record for this notice, as well as the public version, has been established under docket control number [OPPTS–66009], (including any comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as CBI, is available for inspection in Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC.

*C. How and to Whom Do I Submit Comments?*

This rule promulgates technical and procedural amendments to the PCB Disposal Amendments. EPA is not soliciting comments.

## II. Authority

This action is issued under the authority of sections 6(e)(1) and 6(e)(2)(B) of TSCA. Section 6(e)(1)(A) gives EPA the authority to promulgate rules regarding the disposal of PCBs (15 U.S.C. 2605(e)(1)(A)). TSCA section 6(e)(1)(B) provides broad authority for EPA to promulgate rules that would require PCBs to be marked with clear and adequate warnings (15 U.S.C. 2605(e)(1)(B)). TSCA section 6(e)(2)(B) gives EPA the authority to authorize the use of PCBs in other than a totally enclosed manner based on a finding of no unreasonable risk of injury to health or the environment (15 U.S.C. 2605(e)(2)(B)).

## III. Background

The PCB Disposal Amendments published on June 29, 1998 (63 FR 35384)(FRL–5726–1), promulgated significant amendments to 40 CFR part 761 affecting the use, manufacture, processing, distribution in commerce, and disposal of PCBs. Among other things, the Disposal Amendments authorized additional uses of PCBs, provided new alternatives for the cleanup and disposal of PCBs, established standards and procedures for decontaminating materials contaminated with PCBs, and created a mechanism for recognizing, under TSCA, other Federal or State waste management permits or approvals for PCBs.

A number of technical errors occurred in publishing the Disposal Amendments. These errors included typographical errors resulting in incorrect characters, numbers, and units of measurement; incorrect cross-references to the codified text; editing errors resulting in differences between the preamble provisions and the codified text of the rule; and errors in transcribing the final version of the rule for publication. This rule corrects those errors.

This rule also corrects several instances of incorrect use of the term ''industrial furnace''. The proposed Disposal Amendments, 59 FR 62788 (December 6, 1994), included provisions for disposal of certain types of PCB waste in combustion facilities, termed ''industrial furnaces'', that complied with specified operating parameters and conditions. (See 59 FR 62803.) Commenters expressed confusion over EPA's use of the term ''industrial furnace'', since the proposed operating conditions and parameters were not identical to those applicable to an ''industrial furnace'' as defined in the regulations at 40 CFR 260.10 that implement the Resource Conservation and Recovery Act (40 U.S.C. 6901 *et seq*.). In § 761.72 of the final rule, EPA changed the term ''industrial furnace'' to ''scrap metal recovery oven'' or ''smelter''. (See 63 FR 35402.) Both the preamble and the codified text, however, incorrectly retain several references to the term ''industrial furnace''.

In addition, this rule establishes a procedure for requesting an approval for risk-based sampling, cleanup, storage, or disposal of PCB remediation waste under § 761.61(c), and for risk-based decontamination or sampling of decontaminated material under § 761.79(h), where those activities occur in more than one EPA Region. Those sections of the Disposal Amendments now require a person wishing to engage in those activities to apply for and receive an approval from the EPA Regional Administrator. This rule amends those sections to provide that requests for approval of these activities should be submitted to the EPA Regional Administrator for activity occurring in a single EPA Region, and to the Director, National Program Chemicals Division, for activities occurring in more than one EPA Region.

Under section 553(b) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b), the requirements to publish a notice of proposed rulemaking and to offer an opportunity for public comment do not apply to rules of agency organization, procedure, or practice, or to rules as to which the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. EPA finds that the technical corrections and amendments included in this rule are minor, routine clarifications that will not have a significant effect on industry or the public, and that prior notice and opportunity for public comment are therefore unnecessary. Similarly, EPA is promulgating the procedural changes in this rule without notice or opportunity for public comment as provided for in section 553(b) of the APA.

*A. Technical Corrections to the Preamble*

Below are listed errors in the preamble to the Disposal Amendments, with reference to the page and column of the **Federal Register** in which they occurred, and the correct text.

1. On page 35388, a word was inadvertently omitted. In the fourth sentence of the first full paragraph of the first column, the phrase ''and a non-aqueous phase containing 60 ppm''

should read, ''and a non-aqueous liquid phase containing 60 ppm''.

2. Page 35390 contains an incorrect character. In the first sentence of the third full paragraph of the second column, the phrase, ''for non-porous surfaces in contact with liquid PCBs destined for smelting, ≤ 100 µg PCBs/100 $cm^2$'', should read, ''for non-porous surfaces in contact with liquid PCBs destined for smelting, <100 µg PCBs/100 $cm^2$''.

3. Page 35390 refers to different units of measurement than are used in the corresponding regulatory text at § 761.79(b)(2). In the first partial paragraph of the third column, the phrase, ''for organic and non-aqueous inorganic liquids, ≤ 2 mg PCBs/L'', should read, ''for organic and non-aqueous inorganic liquids, ≤ 2 mg PCBs/kg''; the phrase, ''The codified text uses ppm or milligrams per liter (mg/L) for concentration measurements of non-aqueous liquids'', should read, ''The codified text uses ppm or milligrams per kilogram (mg/kg) for concentration measurements of non-aqueous liquids''.

4. Page 35390 contains an incorrect citation. In the fifth sentence of the first full paragraph of the third column, ''§ 761.79(g)(2)'' should read ''§ 761.79(g)(3)''.

5. EPA has been informed of a new address for the American Society for Testing and Materials. On page 35391, in the second sentence of the third full paragraph of the third column, ''Philadelphia, PA'' should read ''West Conshohocken, PA''.

6. Page 35392 contains an incorrect citation. In the last paragraph of the first column, ''40 CFR 261.10'' should read ''40 CFR 260.10''.

7. Page 35392 contains an incorrect reference to industrial furnaces. In the last paragraph of the first column, ''industrial furnace'' should read ''scrap metal recovery oven or smelter''.

8. Page 35396 contains an incorrect citation. In the last sentence of the second full paragraph of the first column, ''§ 761.30(t)'' should read ''§ 761.30(s)''.

9. Page 35396 contains an editing error. The last sentence of the first full paragraph of the second column incorrectly states that the definition of ''natural gas pipeline system'' in § 761.3 excludes end users. This sentence should read, ''As noted above, because end users are not sellers or distributors of natural gas, they are not subject to the requirements of § 761.30(i).''

10. Page 35403 contains incorrect references to industrial furnaces. In the third sentence of the first partial paragraph of the first column, and in the first sentence of the first full paragraph of the second column, ''an industrial furnace'' should read ''a scrap metal recovery oven or smelter''.

11. Page 35404 contains an editing error. The sixth sentence of the second full paragraph of the third column should read, ''Collect condensate within 72 hours of the final transmission of natural gas through the part of the system to be abandoned or removed. Collect wipe samples after the last transmission of gas through the pipe or during removal from the location it was used to transport natural gas.''

12. Page 35405 contains an incorrect reference to industrial furnaces. In the second sentence of the fourth full paragraph of the first column, ''an industrial furnace'' should read ''a smelter''.

13. Page 35405 contains an incorrect citation. In the last sentence of the last partial paragraph of the second column, ''§ 761.60(b)(6)(iv)'' should read ''§ 761.60(b)(8)''.

14. Page 35409 contains an editing error. In the first sentence of the first full paragraph in the first column, delete the word ''in-situ''.

15. Page 35409 contains an incorrect citation. In the second paragraph of the second column, ''(see § 761.61(a)(5)(i)(B)(*3*)(*iv*) of the regulatory text)'' should read ''(see § 761.61(a)(5)(i)(B)(*2*)(*iv*) of the regulatory text)''.

16. On page 35409, a citation was inadvertently omitted. In the second paragraph of the second column, the last sentence should read, ''In addition, the subpart J recordkeeping requirements and the subpart K notification and manifesting requirements do not apply to off-site disposal of PCB remediation waste at < 50 ppm.''

17. Page 35410 contains an incorrect citation. In the fourth sentence of the third full paragraph of the third column, ''§ 761.65(c)(10)'' should read ''§ 761.65(c)(9)''.

18. Page 35411 contains an incorrect citation. In the last partial paragraph of the first column, ''(see § 761.62(b)(1)(iii))'' should read ''(see § 761.62(b)(1)(ii))''.

19. On page 35411 a citation was inadvertently omitted. The second full paragraph of the third column should read, ''Also, part 761, subparts C, J and K, do not apply to PCB bulk product waste disposed of under § 761.62(b).''

20. Page 35412 contains incorrect references. In the second and third full paragraphs of the first column, ''subpart O'' should read ''subpart R''.

21. On page 35413, a spelling error occurs. In the second sentence of the second full paragraph of the first column, ''(e.g., chopping, stripping insulation, and scrapping)'' should read ''(e.g., chopping, stripping insulation, and scraping)''.

22. As a technical clarification, on page 35413, after the third sentence in the first full paragraph of the third column, add, ''EPA also changed the term 'industrial furnaces', used in the proposed rule, to 'scrap metal recovery ovens and smelters'.''

23. On page 35414, the preamble makes a statement that is inconsistent with the corresponding regulatory text. In the last partial paragraph of the second column, the last three sentences should be replaced with the following: ''Since RCRA interim status facilities have financial assurance and are subject to corrective action, § 761.65(b)(2) allows alternate storage of PCBs at these facilities as long as the containment requirements of 40 CFR 264.175 are met and spills of PCBs are cleaned up in accordance with the PCB Spill Cleanup Policy.''

24. Page 35418 contains an incorrect number. In the second sentence of the second full paragraph of the second column, the phrase ''concentrations ''≧ 500 ppm'' should read concentrations ''≧ 50 ppm''.

25. Page 35418 contains incorrect references to industrial furnaces. In the second sentence of the second full paragraph of the second column, and in the fifth sentence of the second full paragraph of the second column, ''an industrial furnace'' should read ''a smelter''.

26. Page 35420 contains an editing error. The last sentence of the second full paragraph of the third column should read, ''Today's rule implements the Sierra Club decision by amending § 761.93 to prohibit import of any PCBs or PCB Items.''

### *B. Technical Amendments to the Codified Text*

This rule also amends specified provisions of the codified text of the Disposal Amendments. Most of these amendments correct typographical errors and errors in citations, change incorrect references to industrial furnaces, and effect minor punctuation changes that make the rule easier to read. Changes that are not self-explanatory are described in this section.

This rule removes the definition of ''emergency situation'' from § 761.3. This definition supported portions of § 761.30(a)(1)(iii), which authorized, until 1990, the otherwise-prohibited installation of a PCB Transformer in or near a commercial building in an ''emergency situation''. The Disposal Amendments removed the portions of

§ 761.30(a)(1)(iii) that authorized these emergency installations because they expired in 1990. However, the agency neglected to remove the supporting definition of ''emergency situation''.

This rule removes and reserves § 761.30(j)(3). That section prescribes manifesting requirements for certain research and disposal wastes. Those requirements conflict with the generally-applicable requirements for manifesting and disposing of research and development waste at § § 761.65(i) and 761.64(b)(2).

EPA included § 761.50(b)(3) in the Disposal Amendments to clarify the status of PCB waste that was placed in a land disposal facility, spilled, or otherwise released into the environment prior to the effective date of the regulations implementing TSCA section 6(e). The Disposal Amendments state that sites containing PCB waste at concentrations ≧ 50 ppm that was placed in a land disposal facility, spilled, or otherwise released into the environment prior to April 18, 1978 (the effective date of the first PCB disposal rules), are presumed not to present an unreasonable risk of injury to health or the environment from exposure to PCBs at the site. This rule extends the presumption to include PCB waste at as-found concentrations ≧ 50 ppm that was placed in a land disposal facility, spilled, or otherwise released into the environment on or after April 18, 1978, but prior to July 2, 1979, where the concentration of the spill or release was ≧ 50 ppm but < 500 ppm. Between these two dates, disposal of PCBs was regulated, but only if the PCBs were at concentrations ≧ 500 ppm.

This rule removes and reserves § 761.60(a)(3)(i) because the regulatory provisions it cites in 40 CFR part 268, specifying requirements for disposal of PCB liquids under RCRA, have been removed (see 62 FR 26022, May 12, 1997 (FRL–5816–5), and 63 FR 28556, see page 28622, May 26, 1998)(FRL–6010–5).

This rule removes the cross-reference in § 761.60(b)(1)(i)(B) to § 761.60(a)(1). At the time of the proposed rule, § 761.60(a)(1) required disposal of certain PCB liquids in an incinerator. The final rule revised § 761.60, changing the content of paragraph (a)(1), but did not include the necessary conforming change to § 761.60(b)(1)(i)(B). This rule corrects that error by replacing the reference to paragraph (a)(1) in § 761.60(b)(1)(i)(B) with a specific reference to incineration.

Section 761.60(b)(4), pertaining to PCB-Contaminated Electrical Equipment, and § 761.60(b)(6)(ii), pertaining to PCB-Contaminated Articles, specify slightly different disposal requirements for what are essentially the same materials. This rule amends § 761.60(b)(4) by providing that, with the exception of PCB-Contaminated Large Capacitors, PCB-Contaminated Electrical Equipment must be disposed of in the same manner as a PCB-Contaminated Article under § 761.60(b)(6)(ii). The requirements for this equipment have been consolidated at § 761.60(b)(6)(ii).

Section 761.60(b)(6)(ii), as amended by this rule, includes a provision to exclude this equipment from the manifesting requirements of subpart K. This provision was inadvertently omitted from the final rule. Prior to promulgation of the Disposal Amendments, PCB-Contaminated Electrical Equipment was not regulated for disposal and thus was not subject to manifesting. While the Disposal Amendments imposed certain requirements on disposal of this equipment, it was EPA's intent that the manifesting requirements not apply. This intent was stated at the public meeting on the proposed rule held June 6–7, 1995. (See transcript, Informal Public Hearing, Disposal of Polychlorinated Biphenyls, Part One, June 6, 1995, p. 219.) In addition, this intent is reflected in the Response to Comments Document on the proposed rule, which states that the manifesting requirement for drained PCB-Contaminated Electrical Equipment was deleted from the final rule. (See Response to Comments Document on the Proposed Rule -- Disposal of Polychlorinated Biphenyls, OPPTS Docket #66009A, May 1998, p. 58). Section 761.60(b)(6)(ii)(C) corrects the inadvertent omission of the manifesting exclusion.

*C. Procedural Amendments*

As noted above, this rule contains procedural amendments to § 761.61(c) and § 761.79(h) to allow the Director of the National Program Chemicals Division to issue risk-based approvals for activities occurring in more than one EPA Region. Those sections of the Disposal Amendments now require a person wishing to sample, clean up, store, or dispose of PCB remediation waste, or to decontaminate PCBs or sample decontaminated material, in a manner not specifically provided for in the Disposal Amendments, to apply for a risk-based approval from the EPA Regional Administrator. This rule amends those sections to provide that requests for approval of these activities should be submitted to the EPA Regional Administrator for activities occurring in a single EPA Region, and to the Director, National Program Chemicals Division, for activities occurring in more than one EPA Region.

## IV. What Actions Were Required by The Various Regulatory Assessment Mandates?

This rule implements technical and procedural amendments to 40 CFR part 761. Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Pub.L. 104–4). This rule does not involve special consideration of environmental justice-related issues as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule also is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997) because EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish any environmental standards intended to mitigate health or safety risks. This rule does not involve technical standards and therefore is not subject to section 12(d) of the National Technology Transfer and Advancement Act of 1995, 15 U.S.C. 272 note. Finally, this rule is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., because it does not impose any monitoring, reporting, or recordkeeping requirements. EPA's compliance with the statutes and Executive Orders for the underlying Disposal Amendments rule is discussed in the June 29, 1998, **Federal Register** notice.

## V. Are There Any Impacts on Tribal, State and Local Governments?

*A. Executive Order 12875*

Under Executive Order 12875, entitled *Enhancing Intergovernmental Partnerships* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a Federal mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

*B. Executive Order 13084*

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

## VI. Submission to Congress and the General Accounting Office

The Congressional Review Act (CRA), 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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of June 24, 1999. 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 this rule in the **Federal Register**. This rule effects technical and procedural amendments to 40 CFR part 761 and is not a ''major rule'' as defined by 5 U.S.C. 804(2).

## List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls (PCBs), Reporting and recordkeeping requirements

Dated: June 15, 1999.

**Susan H. Wayland,**

*Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

Therefore, 40 CFR Part 761 is amended as follows:

## PART 761—[AMENDED]

1. The authority citation for part 761 continues to read as follows:

**Authority:** 15 U.S.C. 2605, 2607, 2611, 2614, and 2616.

### § 761.1 [Amended]

2. In § 761.1(b)(3), revise ''≤ 10/100 $cm^2$'' to read ''≤ 10 μg/100 $cm^2$''.

3. Amend § 761.2(a)(3) by revising the last sentence to read as follows:

### § 761.2 PCB concentration assumptions for use.

(a) * * *

(3) * * * If the date of manufacture and the type of dielectric fluid are unknown, any person must assume the transformer to be a PCB Transformer.

* * * * *

4. Amend § 761.3 as follows:

a. Remove the definition of ''emergency situation''.

b. Revise the definition of ''ASTM'' and in the definition of ''PCB remediation waste'' revise the first sentence of the introductory text and revise paragraph (3) to read as follows:

### § 761.3 Definitions.

* * * * *

*ASTM* means American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

* * * * *

*PCB remediation waste* means waste containing PCBs as a result of a spill, release, or other unauthorized disposal, at the following concentrations: Materials disposed of prior to April 18, 1978, that are currently at concentrations ≥ 50 ppm PCBs, regardless of the concentration of the original spill; materials which are currently at any volume or concentration where the original source was ≥ 500 ppm PCBs beginning on April 18, 1978, or ≥ 50 ppm PCBs beginning on July 2, 1979; and materials which are currently at any concentration if the PCBs are spilled or released from a source not authorized for use under this part. ***

* * * * *

(3) Buildings and other man-made structures (such as concrete floors, wood floors, or walls contaminated from a leaking PCB or PCB-Contaminated Transformer), porous surfaces, and non-porous surfaces.

* * * * *

5. Amend § 761.19(b) by revising the last sentence to read as follows:

### § 761.19 References.

* * * * *

(b) * * * Copies of the incorporated material may be obtained from the American Society for Testing and Materials (ASTM), 100 Barr Harbor

Drive, West Conshohocken, PA 19428–2959.

* * * * *

**§ 761.20 [Amended]**

6. In § 761.20(c)(2)(ii), correct the reference to ''§ 261.10 of this chapter'' to read ''§ 260.10 of this chapter''.

7. Amend § 761.30 as follows:

a. Revise paragraph (a)(1)(xii)(J) and the first sentence of paragraph (i)(4).

b. In the last sentence of paragraph (i)(1)(iii)(D), revise ''delegate'' to read ''defer''.

c. In the first sentence of paragraph (i)(5), revise the reference ''§ 761.60(a)'' to read ''§ 761.61(a)(5)(iv)''.

d. Remove and reserve paragraph (j)(3).

e. In the introductory language to paragraph (p)(1), revise ''> 10 µg/100 $cm^2$'' to read ''≧ 50 ppm''.

The revised portions read as follows:

**§ 761.30 Authorizations.**

(a) * * *

(1) * * *

(xii) * * *

(J) Records of transfer of ownership in compliance with § 761.180(a)(2)(ix).

* * * * *

(i) * * *

(4) Any person characterizing PCB contamination in natural gas pipe or natural gas pipeline systems must do so by analyzing organic liquids collected at existing condensate collection points in the pipe or pipeline system. The level of PCB contamination found at a collection point is assumed to extend to the next collection point downstream. Any person characterizing multi-phasic liquids must do so in accordance with § 761.1(b)(4).

* * * * *

8. Section 761.40 is amended in paragraph (b), by revising ''1979'' to read ''1978'', and by revising paragraph (l) to read as follows:

**§ 761.40 Marking requirements.**

* * * * *

(l)(1) All voltage regulators which contain 1.36 kilograms (3 lbs.) or more of dielectric fluid with a PCB concentration of ≥ 500 ppm must be marked individually with the $M_L$ mark as described in § 761.45(a).

(2) Locations of voltage regulators which contain 1.36 kilograms (3 lbs.) or more of dielectric fluid with a PCB concentration of ≥ 500 ppm shall be marked as follows: The vault door, machinery room door, fence, hallway, or means of access, other than grates or manhole covers, must be marked with the $M_L$ mark as described in § 761.45(a).

9. Amend § 761.50 by revising the introductory text of paragraph (b)(3)(i), the first sentence of paragraph (b)(3)(i)(B), paragraph (b)(3)(ii) introductory text, and in paragraph (b)(8) by revising the reference ''§ 761.61(a)(5)(iii)'' to read ''§ 761.61''.

The revised portions read as follows:

**§ 761.50 Applicability.**

* * * * *

(b) * * *

(3) * * *

(i) Any person responsible for PCB waste at as-found concentrations ≥ 50 ppm that was either placed in a land disposal facility, spilled, or otherwise released into the environment prior to April 18, 1978, regardless of the concentration of the spill or release; or placed in a land disposal facility, spilled, or otherwise released into the environment on or after April 18, 1978, but prior to July 2, 1979, where the concentration of the spill or release was ≥ 50 ppm but < 500 ppm, must dispose of the waste as follows:

* * * * *

(B) Unless directed by the EPA Regional Administrator to dispose of PCB waste in accordance with paragraph (b)(3)(i)(A) of this section, any person responsible for PCB waste at as-found concentrations ≥ 50 ppm that was either placed in a land disposal facility, spilled, or otherwise released into the environment prior to April 18, 1978, regardless of the concentration of the spill or release; or placed in a land disposal facility, spilled, or otherwise released into the environment on or after April 18, 1978, but prior to July 2, 1979, where the concentration of the spill or release was ≥ 50 ppm but < 500 ppm, who unilaterally decides to dispose of that waste (for example, to obtain insurance or to sell the property), is not required to clean up in accordance with § 761.61. * * *

(ii) Any person responsible for PCB waste at as-found concentrations ≥ 50 ppm that was either placed in a land disposal facility, spilled, or otherwise released into the environment on or after April 18, 1978, but prior to July 2, 1979, where the concentration of the spill or release was ≥ 500 ppm; or placed in a land disposal facility, spilled, or otherwise released into the environment on or after July 2, 1979, where the concentration of the spill or release was ≥ 50 ppm, must dispose of it in accordance with either of the following:

* * * * *

**§ 761.60 [Amended]**

10. Amend § 761.60 as follows:

a. Remove and reserve paragraph (a)(3)(i).

b. Revise the second sentence of paragraph (b)(1)(i)(B).

c. In paragraph (b)(3)(i)(C), revise the phrase ''an industrial furnace'' to read ''a scrap metal recovery oven or smelter''.

d. Revise paragraph (b)(4).

e. Amend paragraphs (b)(5)(i)(B) and (b)(5)(ii)(A)(*1*) by removing the phrase ''in accordance with subpart M of this part''.

f. Amend paragraph (b)(5)(i)(C)(*2*) by adding ''or more'' after, ''The pipe is filled to 50 percent''.

g. In paragraph (b)(5)(i)(D), revise ''§ 761.62(c)'' to read ''§ 761.61(c)''.

h. Revise the last sentence of paragraph (b)(5)(iii)(A).

i. In paragraph (b)(5)(ii)(A), revise the phrase, ''scrap metal recovery oven and smelter'', to read, ''a scrap metal recovery oven or smelter''.

j. Redesignate paragraphs (b)(6)(ii) introductory text, (b)(6)(ii)(A), (b)(6)(ii)(B), (b)(6)(ii)(C), and (b)(6)(ii)(D) as paragraphs (b)(6)(ii)(A) introductory text, and paragraphs (b)(6)(ii)(A)(*1*) through (b)(6)(ii)(A)(*4*), respectively.

k. In redesignated paragraph (b)(6)(ii)(A)(*3*), revise the phrase ''an industrial furnace'' to read ''a scrap metal recovery oven or smelter''.

l. Revise redesignated paragraph (b)(6)(ii)(A) introductory text, add paragraphs (b)(6)(ii)(B) and (b)(6)(ii)(C), remove paragraph (b)(6)(iv) and add paragraph (b)(8), to read as follows:

**§ 761.60 Disposal requirements.**

* * * * *

(b) * * *

(1) * * *

(i) * * *

(B) * * * Any person disposing of PCB liquids that are removed from the transformer (including the dielectric fluid and all solvents used as a flush), shall do so in an incinerator that complies with § 761.70 of this part, or shall decontaminate them in accordance with § 761.79. * * *

* * * * *

(4) *PCB-Contaminated Electrical Equipment.* Any person disposing of PCB-Contaminated Electrical Equipment, except capacitors, shall do so in accordance with paragraph (b)(6)(ii)(A) of this section. Any person disposing of Large Capacitors that contain ≥ 50 ppm but < 500 ppm PCBs shall do so in a disposal facility approved under this part.

(5) *Natural gas pipeline systems containing PCBs.* * * *

(iii) *Characterization of natural gas pipeline systems by PCB concentration in condensate.* * * *

(A) * * * Collect condensate within 72 hours of the final transmission of

natural gas through the part of the system to be abandoned or removed. Collect wipe samples after the last transmission of gas through the pipe or during removal from the location it was used to transport natural gas.

* * * * *

(6) * * *

(ii) * * *

(A) Except as specifically provided in paragraphs (b)(1) through (b)(5) of this section, any person disposing of a PCB-Contaminated Article must do so by removing all free-flowing liquid from the article, disposing of the liquid in accordance with paragraph (a) of this section, and disposing of the PCB-Contaminated Article with no free-flowing liquid by one of the following methods:

* * * * *

(B) Storage for disposal of PCB-Contaminated Articles from which all free-flowing liquids have been removed is not regulated under subpart D of this part.

(C) Requirements in subparts J and K of this part do not apply to PCB-Contaminated Articles from which all free-flowing liquids have been removed.

* * * * *

(8) Persons disposing of PCB Articles must wear or use protective clothing or equipment to protect against dermal contact with or inhalation of PCBs or materials containing PCBs.

11. Amend § 761.61 as follows:

a. In paragraph (a)(5)(ii)(B)(*1*), revise ''paragraph (a)(5)(i)(B)(*3*)(*ii*)'' to read ''paragraph (a)(5)(i)(B)(*2*)(*ii*)''.

b. In paragraph (a)(5)(ii)(B)(*2*) revise ''paragraph (a)(5)(i)(B)(*3*)(*iii*)'' to read ''paragraph (a)(5)(i)(B)(*2*)(*iii*)''.

c. Revise the second sentence of paragraph (a)(3)(ii), paragraphs (a)(5)(i)(A) introcductory text, (a)(5)(i)(B)(*2*)(*i*), paragraph (a)(5)(v)(A), and the first sentence of paragraph (c)(1) to read as follows:

**§ 761.61 PCB remediation waste.**

* * * * *

(a) * * *

(3) * * *

(ii) *** If the EPA Regional Administrator does not respond within 30 calendar days of receiving the notice, the person submitting the notification may assume that it is complete and acceptable and proceed with the cleanup according to the information the person provided to the EPA Regional Administrator. ***

* * * * *

(5) * * *

(i) * * *

(A) Any person cleaning up bulk PCB remediation waste on-site using a soil washing process may do so without EPA approval, subject to all of the following:

* * * * *

(B) * * *

(*2*) * * *

(*i*) Unless sampled and analyzed for disposal according to the procedures set out in § § 761.283, 761.286, and 761.292, the bulk PCB remediation waste shall be assumed to contain ≥ 50 ppm PCBs.

* * * * *

(v) * * *

(A) Non-liquid cleaning materials and personal protective equipment waste at any concentration, including non-porous surfaces and other non-liquid materials such as rags, gloves, booties, other disposable personal protective equipment, and similar materials resulting from cleanup activities shall be either decontaminated in accordance with § 761.79(b) or (c), or disposed of in one of the following facilities, without regard to the requirements of subparts J and K of this part:

(*1*) A facility permitted, licensed, or registered by a State to manage municipal solid waste subject to part 258 of this chapter.

(*2*) A facility permitted, licensed, or registered by a State to manage non-municipal non-hazardous waste subject to § § 257.5 through 257.30 of this chapter, as applicable.

(*3*) A hazardous waste landfill permitted by EPA under section 3004 of RCRA, or by a State authorized under section 3006 of RCRA.

(*4*) A PCB disposal facility approved under this part.

* * * * *

(c) * * * (1) Any person wishing to sample, cleanup, or dispose of PCB remediation waste in a manner other than prescribed in paragraphs (a) or (b) of this section, or store PCB remediation waste in a manner other than prescribed in § 761.65, must apply in writing to the EPA Regional Administrator in the Region where the sampling, cleanup, disposal or storage site is located, for sampling, cleanup, disposal or storage occurring in a single EPA Region; or to the Director of the National Program Chemicals Division, for sampling, cleanup, disposal or storage occurring in more than one EPA Region. * * *

* * * * *

**§ 761.62 [Amended]**

12. Amend § 761.62 as follows:

a. In paragraph (b)(1)(ii), revise ''subpart O'', to read ''subpart R''.

b. In paragraph (b)(4)(i), revise ''≤ 50 ppm'' to read ''≥ 50 ppm''.

c. In paragraph (b)(6), revise ''subparts C and K'' to read ''subparts C, J, and K''.

d. Revise the title of paragraph (c) to read, ''*Risk-based disposal approval.*''

e. Paragraph (c) is further amended by removing the phrases ''disposal or storage'' and ''storage or disposal'' wherever they appear and adding in place thereof, the phrase ''sampling, disposal, or storage''.

**§ 761.72 [Amended]**

13. Amend § 761.72 as follows:

a. In paragraph (c)(3), in the first sentence, revise the phrase, ''In lieu of the requirements in paragraphs (a) and (b) of this section'', to read, ''In lieu of the requirements in paragraph (c)(1) of this section''; and revise the phrase, ''the parameters and conditions listed in paragraphs (a)(1) through (a)(8) and (b)(1) through (b)(9) of this section'', to read, ''the parameters and conditions listed in paragraph (a) or (b) of this section''.

b. Revise paragraph (a)(7) to read as follows:

**§ 761.72 Scrap metal recovery ovens and smelters.**

* * * * *

(a) * * *

(7) Emissions from the secondary chamber must be vented through an exhaust gas stack in accordance with either:

(i) State or local air regulations or permits, or

(ii) The standards in paragraph (a)(8) of this section.

* * * * *

**§ 761.79 [Amended]**

14. Amend § 761.79 as follows:

a. In paragraph (a)(5), amend ''(c)(8)'' to read ''(c)(6)''.

b. Amend paragraph (c)(2) introductory text by removing the phrase, ''and used in storage areas''.

c. In paragraph (c)(5)(i), revise ''paragraphs (b), (c)(1) through (c)(6), or (c)(8) of this section'' to read ''paragraphs (b), (c)(1) through (c)(4), or (c)(6) of this section''.

d. In the last sentence of paragraph (c)(5)(iv), revise ''PODF'' to read ''solvent''.

e. In paragraph (c)(6)(i), revise ''an industrial furnace'' to read ''a scrap metal recovery oven or smelter''.

f. In paragraph (c)(6)(ii), revise ''an industrial furnace'' to read ''a smelter''.

g. Revise the first sentences of paragraphs (h)(1), (h)(2), and (h)(3) to read as follows. The paragraph title is shown for the convenience of the reader.

**§ 761.79 Decontamination standards and procedures.**

* * * * *

(h) *Alternative decontamination or sampling approval.* (1) Any person wishing to decontaminate material described in paragraph (a) of this section in a manner other than prescribed in paragraph (b) of this section must apply in writing to the EPA Regional Administrator in the Region where the activity would take place, for decontamination activity occurring in a single EPA Region; or the Director of the National Program Chemicals Division, for decontamination activity occurring in more than one EPA Region. * * *

(2) Any person wishing to decontaminate material described in paragraph (a) of this section using a self-implementing procedure other than prescribed in paragraph (c) of this section must apply in writing to the EPA Regional Administrator in the Region where the activity would take place, for decontamination activity occurring in a single EPA Region; or the Director of the National Program Chemicals Division, for decontamination activity occurring in more than one EPA Region. * * *

(3) Any person wishing to sample decontaminated material in a manner other than prescribed in paragraph (f) of this section must apply in writing to the EPA Regional Administrator in the Region where the activity would take place, for decontamination activity occurring in a single EPA Region; or the Director of the National Program Chemicals Division, for decontamination activity occurring in more than one EPA Region. * * *

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### § 761.247 [Amended]

15. Amend § 761.247 as follows:

a. Amend the heading by removing ''or pipeline section abandonment''.

b. Amend paragraph (a)(3) by removing ''or pipeline section''.

c. In the fourth sentence of paragraph (b)(2)(ii)(B)(*2*), revise ''section'' to read ''length''.

d. Amend the introductory language to paragraph (c) by removing ''pipeline section or''.

e. Amend paragraph (c)(5)(iii) by removing ''pipeline section or''.

f. Amend the second sentence of paragraph (d) by removing ''pipeline section or'' each time it appears.

### § 761.250 [Amended]

16. In § 761.250(a)(2), revise ''§ 761.247(d)'' to read ''§ 761.247(c) and (d)''.

### § 761.347 [Amended]

17. In § 761.347(c)(3)(i)(C), revise ''paragraph (c)(3)(iii) of this section'' to read ''paragraph (c)(3)(i)(B) of this section''.

[FR Doc. 99–16098 Filed 6–23–99; 8:45 am]
BILLING CODE 6560–50–F

## FEDERAL MARITIME COMMISSION

### 46 CFR Parts 502, 545 and 571

**[Docket No. 98–21]**

### Miscellaneous Amendments to Rules of Practice and Procedure; Correction

**AGENCY:** Federal Maritime Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** The Federal Maritime Commission published in the **Federal Register** of February 17, 1999, a final rule making changes to existing regulations to update and improve them, and to conform them to and implement the Ocean Shipping Reform Act of 1998. Subsequently on May 3, 1999 a correction was published to add several amendatory instructions that were omitted in the final rule. This document satisfies Office of the Federal Register concerns, by correcting the new amendatory instructions.

**FOR FURTHER INFORMATION CONTACT:** Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol St., NW, Room 1046, Washington, DC 20573–0001, (202) 523–5725, E-mail:secretary@fmc.gov.

**DATES:** Effective on June 24, 1999.

**SUPPLEMENTARY INFORMATION:** The FMC published a final rule in the **Federal Register** of February 17, 1999, (64 FR 7804) which made corrections and changes to existing rules of practice and procedure. Subsequently, a correction to the final rule was published on May 3, 1999 (64 FR 23551) to add several amendatory instructions which had been omitted. The **Federal Register** has requested that the FMC publish the following correction to clarify those amendatory instructions.

In the correction to Docket No. 98–21, published on May 3, 1999, on page 23551 in the second column, revise correction number one (1) to read as follows:

1. On page 7807, in the first column, after the text of instruction 4(c) add the following amendatory instructions:

d. In redesignating paragraph (b), revise the phrase ''paragraphs (b)(5), (6), and (7),'' to read ''paragraphs (e), (f), and (g).''

e. In redesignated paragraph (d), redesignate paragraphs (i), (ii), and (iii) as paragraphs (1), (2), and (3), and in redesignated paragraph (d)(3), revise the phrase ''(b)(4)(i) and (b)(4)(ii)'' to read ''(d)(1) and (d)(2).''

f. In redesignated paragraph (e), revise the reference ''(b)(4)'', to read ''(d).''

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 99–15973 Filed 6–23–99; 8:45 am]
BILLING CODE 6730–01–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 22 and 90

**[WT Docket No. 96–18; PR Docket No. 93–253; FCC 99–98]**

### Future Development of Paging Systems

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document concerns rules and policies for the geographic area licensing of Common Carrier Paging and exclusive 929 MHz Private Carrier Paging, and competitive bidding procedures for auctioning mutually exclusive applications for these licenses. This document also adopts rules concerning the partitioning and disaggregation of paging licenses, and institutes procedures designed to deter application fraud on shared paging channels. The intended effect of this action is to clarify and resolve issues pertaining to the paging service prior to the Commission's auctions of remaining spectrum within that service.

**EFFECTIVE DATES:** Effective August 23, 1999.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW, Washington DC 20554.

**FOR FURTHER INFORMATION CONTACT:** For non-auction information: Cyndi Thomas or Todd Slamowitz, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418–7240. For auction information: Anne Napoli, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660. TTY (202) 418–7233.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the *Memorandum Opinion and Order on Reconsideration and Third Report and Order* in WT Docket No. 96–18 and PR Docket No. 93–253, FCC 99–98, adopted on May 13, 1999, and released on May 24, 1999. The complete text of this decision is available for inspection and copying during normal business hours in the

FCC Reference Center, 445 Twelfth Street, SW, Room CY–A257, Washington DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 445 Twelfth Street, SW, Room CY–B400, Washington DC. The complete text is also available under the file name fcc99098.wp on the Commission's internet site at http://www.fcc.gov/Bureaus/Wireless/Orders/1999.

**Paperwork Reduction Act**

The *Second R&O* and this *MO&O* and *Third R&O* contain a revision to an existing information collection that has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, Public Law No. 104–13 (3060–0697). The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public and the OMB to comment on this information collection in a separate **Federal Register** publication.

**Synopsis of Memorandum Opinion and Order on Reconsideration and Third Report and Order**

*Memorandum Opinion and Order on Reconsideration*

1. The Commission adopts a *Memorandum Opinion and Order on Reconsideration* (*MO&O*) and *Third Report and Order* (*Third R&O*) that responds to petitions for reconsideration or clarification of the *Second Report and Order* (*Second R&O*) and *Further Notice of Proposed Rulemaking* (*Further Notice*) adopted in this proceeding on February 19, 1997. The *Second R&O* (62 FR 11616, March 12, 1997) established rules to govern the geographic area licensing of Common Carrier Paging (CCP) and exclusive 929 MHz Private Carrier Paging (PCP), and procedures for auctioning mutually exclusive applications for these licenses. In general, the *MO&O* affirms the rules adopted in the *Second R&O,* with some changes and clarifications, stating the Commission's continuing belief that the adopted rules will facilitate competition in the wireless market by encouraging a more diverse array of entities, including small businesses and rural telephone companies, to offer paging services to the public. The *Further Notice* (62 FR 11616, March 12, 1997) sought comment on issues concerning partitioning and disaggregation of paging licenses, coverage requirements for nationwide geographic area licensees, and possible revisions to application procedures for shared channels. The *Third R&O* modifies the paging rules to permit partitioning by all nationwide geographic area licensees and to allow disaggregation by all geographic area licensees; adopts rules governing the coverage requirements for parties to partitioning or disaggregation agreements involving non-nationwide geographic area licenses, and the license term of partitioned or disaggregated geographic area licenses; permits geographic area licensees to combine partitioning and disaggregation; and establishes additional mechanisms to inform consumers of the rules governing paging licenses and the danger of fraudulent schemes perpetrated by application mills.

*Dismissal of Pending Applications*

2. The *MO&O* denies the petitions seeking reconsideration of the Commission's decision to dismiss all mutually exclusive paging applications and all paging applications filed after July 31, 1996. In the *Second R&O,* the Commission stated that, in light of its decision to adopt geographic area licensing, it would dismiss all pending mutually exclusive paging applications, including those filed under the interim rules adopted in the *First R&O* (61 FR 21380, May 10, 1996), and all applications filed after July 31, 1996. On December 14, 1998, the Commercial Wireless Division of the Wireless Telecommunications Bureau dismissed these applications pursuant to the *Second R&O.*[1]

3. The Commission disagrees with petitioners' arguments that the Commission did not notify the public prior to release of the *Second R&O* of its intent to dismiss these applications; that the Commission is unlawfully applying new rules retroactively; that applicants reasonably relied on the Commission's prior procedures for processing applications; and that the only reason for licensing paging spectrum through competitive bidding is to raise money for the Federal government. The Commission notes that courts have consistently recognized that the filing of an application creates no vested right to continued application of licensing rules that were in effect when the application was filed, and an application may be dismissed if substantive standards subsequently change. In this proceeding, the Commission dismissed pending applications based on its substantive rule changes establishing geographic area licensing for paging. In light of the notice the Commission gave of its interest in instituting geographic area licensing, and of its intent not to process applications filed after July 31, 1996, the Commission does not believe that any applicants could have reasonably relied on its processing applications filed after that date.

4. Moreover, the Commission does not think that carriers that had previously pending applications will be irreparably harmed by a decision to proceed to the auction of paging licenses without any further processing of site-specific applications because such applications were dismissed without prejudice and these applicants may therefore file applications to participate in the auctions. The Commission states that the reasons for adopting competitive bidding procedures for paging licenses are set forth at length in the *Notice of Proposed Rulemaking* (*Notice*) (61 FR 6199, February 16, 1996) and *Second R&O,* and these reasons do not include revenue-raising considerations. The Commission also notes that it concluded in the *Competitive Bidding Second R&O* (59 FR 162981, May 4, 1994) that mutually exclusive initial paging applications were auctionable under the auction authority provided the Commission by the 1993 Budget Act. This conclusion is unchanged by the Balanced Budget Act of 1997, which amended Section 309(j) to expand the Commission's auction authority.

5. Petitioners also assert that dismissal of pending applications undermines the policy goal of expediting the licensing of paging spectrum because dismissal will delay the initiation of paging service in many market areas and will prevent the expansion of networks. The Commission finds, however, that it was the formidable administrative burden of processing site-by-site applications, and the substantial number of mutually exclusive applications that were filed, which created a backlog of pending applications and caused their processing to be delayed. The Commission further rejects petitioners' suggestion to hold an additional auction for the purpose of resolving mutually exclusive site-by-site licenses, prior to conducting an auction for geographic areas containing these same sites, because it would be grossly inefficient.

6. Citing section 309(j)(6)(E) of the Communications Act of 1934, petitioners contend that the Commission may not proceed to geographic area licensing without first attempting to avoid mutual exclusivity through ''engineering solutions, negotiation, threshold qualifications, service regulations, and other means.'' The Commission has previously

[1] Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, *Order,* WT Docket No. 96–18, DA 98–2543 (Dec. 14, 1998) (*CWD Order*).

construed Section 309(j)(6)(E) to mean that it has an obligation to attempt to avoid mutual exclusivity by the methods prescribed therein only when it would further the public interest goals of Section 309(j)(3). In the *Second R&O,* the Commission concluded that the public interest would be better served by licensing all remaining paging spectrum through a geographic area licensing scheme than by processing additional site-specific licenses. The Commission thereby effectively determined that it would not be in the public interest to implement other licensing schemes or other processes that avoid mutual exclusivity, thus fulfilling its obligation under Section 309(j)(6)(E).

7. Several petitions for reconsideration and an application for review were filed in response to the *CWD Order.* The parties generally reiterate the same arguments against dismissing their applications that were set forth in the petitions for reconsideration filed in response to the Second *R&O.* Having already considered these arguments, the Commission denies the application for review filed by Robert J. and Laurie F. Keller d/b/a Western Maryland Wireless Company on December 28, 1998, and petitions for reconsideration filed on January 13, 1999, by: AirTouch Paging, AirTouch Paging of California, AirTouch Paging of Kentucky, AirTouch Paging of Texas, AirTouch Paging of Virginia, Allcom Communications, Inc., Arch Capitol District, Inc., Arch Connecticut Valley, Inc., Arch Southeast Communications, Inc., Becker Beeper, Inc., Blasiar, Inc., Electronic Engineering Company, Hello Pager Company, Paging Systems Management, Inc., PowerPage Inc., Robert Kester *et al.*, Satellite Paging, Inc., South Texas Paging, Inc. (Arthur Flemmer), USA Mobile Communications, Inc. II, Westlink Licensee Corporation, and Westlink of New Mexico Licensee.

*Geographic Areas*

8. The Commission grants the petitions that request the Commission to use Major Economic Areas (MEAs) instead of Major Trading Areas (MTAs) for geographic licensing of the upper bands (929 and 931 MHz). When the Commission adopted the *Second R&O,* it had not established MEAs, which were first developed by the Commission to define geographic license areas for the Wireless Communications Service (WCS). Although MTAs and MEAs are substantially similar, the Commission finds that geographic area licensing based on MEAs will provide geographic area licensees with benefits that could not be obtained if the Commission maintained MTAs as the geographic area for the 929–931 MHz band. Licensees with paging systems in both the upper bands and the lower bands (35–36 MHz, 43–44 MHz, 152–159 MHz, and 454–460 MHz), which will be licensed as EAs, will benefit from the use of MEAs for the upper bands because MEAs are composed of EAs. The fact that the geographic borders of MEAs coincide with those of the EAs contained within the MEAs will enable licensees with both upper and lower band systems to operate more efficiently. The Commission also finds that adopting MEAs on the upper bands will enhance competition between the paging systems on the lower channels and the paging systems on the upper bands because the paging systems on the lower channels will be able to combine their EAs to form MEAs. The Commission also acknowledges that licensees will benefit economically from licensing based on a geographic designation that is in the public domain.

9. The Commission rejects one petitioner's contention that the decision to eliminate section 90.496 of the Commission's rules was arbitrary and capricious and an unlawful retroactive rulemaking without the opportunity for notice and comment. In the *Second R&O,* the Commission eliminated section 90.496 of its rules, which provided for extended implementation of construction and operations deadlines for proposed systems on the 929–930 MHz band that qualified for regional or nationwide channel exclusivity. As explained in the *Notice,* the Commission found that extended implementation would be unnecessary under its geographic area licensing scheme and, in fact, would hinder geographic area licensing because construction extensions for incumbents could effectively allow them to occupy an entire geographic area. The Commission sought comment in the *Notice* on its proposal to eliminate extended implementation and to dismiss all ''slow growth'' applications pending at the time an order pursuant to the *Notice* was adopted without prejudice to refile under its geographic area licensing scheme. The Commission affirms removal of section 90.496 of its rules and clarifies that removal of the rule does not affect the rights associated with extended implementation authority granted under that rule as of May 12, 1997, the effective date of the *Second R&O.* In addition, any requests pending as of May 12, 1997, are dismissed without prejudice to obtain licenses under the geographic area licensing rules.

10. The Commission rejects one petitioner's request to use BTAs for geographic area licensing in the lower bands, affirming its determination that EAs are appropriate for geographic area licensing on the 35–36 MHz, 43–44 MHz, 152–159 MHz, and 454–460 MHz bands. The petitioner contends that the size of EAs will prevent small and rural paging companies from participating in the geographic area licensing auctions; that EAs contain major urban areas as well as rural and suburban areas, and that small and rural companies are only interested in the rural and suburban areas of the EA; and that partitioning does not address the concerns of small and rural companies. Contrary to the petitioner's arguments, the Commission believes that the size of EA geographic areas will not prevent paging operators of smaller systems from participating in geographic area licensing auctions. The Commission also believes bidding credits will allow small businesses to compete against larger bidders. Further, small and rural paging companies will not be prevented from expanding their systems even if they choose not to participate in the geographic area licensing auctions, because the Commission will allow geographic area licensees to partition their service areas and it has no reason to believe that geographic area licensees will be unwilling to enter into partitioning agreements. The Commission continues to conclude that EAs, which the majority of commenters supported, best reflect the geographic area that the paging licensees on the lower channels seek to serve.

11. The Commission amends section 22.503(b)(3) of the Commission's rules to include three additional EA-like areas for the U.S. territories, which the Commission inadvertently omitted in the Second R&O. The Commission adds the following three EA-like service areas: Guam and the Northern Mariana Islands (EA 173); Puerto Rico and the United States Virgin Islands (EA 174); and American Samoa (EA 175).

*Highly Encumbered Areas*

12. The Commission denies petitions arguing that those incumbent licensees that have previously satisfied certain coverage requirements should receive a geographic area license without competitive bidding. Petitioners advocate granting a market area license to an incumbent providing coverage to at least 70 percent, two-thirds, or a similar portion of the market. Petitioners propose a two-step process for granting market area licenses. First,

where an incumbent operator certifies that it covers 70 percent of a market area's population or geographic area, the Commission should grant a market area license to that incumbent. If multiple incumbents serving a market on a single frequency together cover 70 percent of the population or geographic area, those licensees should be permitted jointly to file an application that demonstrates their joint coverage, and receive a market area license on that basis. In the second step, interested parties could file applications for all remaining available frequencies in each market. Mutually exclusive applications would then be subject to the Commission's auction rules. Petitioners alternatively propose to limit eligible bidders to the same channel incumbents operating within the geographic area or in an area adjacent to the geographic area license.

13. To support their proposals, petitioners argue, for example, that, under the Commission's rules adopted in the *Second R&O,* new opportunities for greenmail and speculative applications will result in inflated auction prices, and reliable service will decline because auctions introduce additional parties for coordination and negotiation and customers will be unable to receive or obtain services if multiple providers are using the same channel within a market area. Petitioners further argue that new entrants will increase the potential for co-channel interference; ''dead zones'' will occur between the incumbent and geographic area licensee's service areas; the incumbent's ability to expand to provide the ''widest area coverage'' will be blocked if a new entrant wins at auction; new entrants will be encouraged to enter markets where it would not be economically viable to do so; and customers will not reap the benefits of competition. In addition, petitioners state that an applicant is not qualified if it cannot meet the construction benchmark of covering two-thirds of the population of an MTA where operating incumbents already meet the coverage requirements. Petitioners further assert that the Commission's current rules do not meet its statutory obligation to avoid mutual exclusivity, while mutual exclusivity could be avoided through ''threshold qualifications,'' identified in their percent-of-coverage proposals.

14. While the Commission recognizes that some geographic areas are significantly served by incumbent licensees, it believes that the market should decide whether an economically viable paging system can be established in the unserved area of a geographic market. For instance, a paging provider that primarily serves an adjacent geographic market may have a strong desire to serve the unserved area in its neighbor's ''home'' market. In addition, even where only 30 percent of a geographic area is available to a potential new entrant, the Commission does not believe that it has been shown that the new entrant cannot establish a viable system that serves the public as well as the incumbent. Thus, the Commission cannot conclude that an incumbent licensee is entitled to a geographic area license without competitive bidding simply because its paging system may cover a substantial portion of the geographic area. The Commission continues to believe that open eligibility promotes prompt service to the public by allocating spectrum to the entity that values it most.

15. The Commission also believes that the benefits of open eligibility outweigh the risks that speculators and misguided applicants pose to the competitive bidding process. Indeed, while speculation can be a problem when licenses are awarded through such systems as lotteries, the Commission believes that auctions deter speculation. The Commission has auctioned other highly encumbered services and has not seen any evidence that speculative applications have raised bidding prices. Petitioners also have not provided any evidence that speculative applications have raised bidding prices in prior auctions.

16. Other issues raised by petitioners are addressed in other sections of the *MO&O.* The Commission states that a new entrant will be able to meet its coverage requirements by providing ''substantial service'' within the geographic area and geographic area licensees must provide co-channel protection to all incumbents. Moreover, the Commission notes that petitioners have not provided any evidence that the ''border'' issues raised here, including problems related to ''dead zones,'' are any different from issues that arise under other circumstances where one licensee is adjacent to another. Finally, turning to its obligation to attempt to avoid mutual exclusivity when it is in the public interest, the Commission does not believe that Congress intended the Commission to interpret the term ''threshold qualifications'' in Section 309(j)(6)(E) to mean that carriers should receive licenses for unserved areas without competitive bidding simply because they already hold certain licenses for other areas in the vicinity, particularly because the result of such an approach would be to preclude the dissemination of licenses to new entrants.

*Basic Exchange Telecommunications Radio Systems Licensees*

17. The *Second R&O* directs that Basic Exchange Telecommunications Radio Systems (BETRS) licensed under the Rural Radiotelephone Service should be subject to geographic area licensing and competitive bidding, and also allows providers in these services to obtain site licenses on a secondary basis. It further provides that all existing BETRS operating on a co-primary basis remain in place and receive full protection from interference by geographic area licensees. BETRS licensees may also enter into partitioning agreements with auction participants and auction winners both before and after the paging auctions. In the *Second R&O,* the Commission stated that ''[i]f a geographic area licensee is concerned that a BETRS facility operating on secondary sites may cause interference to the geographic area licensee's existing or planned facilities, the BETRS provider must discontinue use of the interfering channel no later than six months after the geographic area licensee notifies the BETRS provider of the actual or potential interference.'' This policy is codified at section 22.723 of the rules.

18. Several petitioners argue that BETRS is essential to the Commission's universal service goal of delivering local exchange service to remote, rural areas and should be licensed on a site-by-site, co-primary basis with geographic area licensees, and exempt from competitive bidding procedures. These petitioners contend that participation in auctions will impair the ability of rural telephone companies to respond to their customers' needs for local exchange service in remote rural areas.

19. The Commission declines to adopt rules that permit site-by-site licensing of BETRS on a co-primary basis with geographic area paging licensees. The Commission agrees that BETRS provide an important service, but finds that BETRS do not require exemption from competitive bidding to ensure continued BETRS service and lower costs to subscribers. The rules that the Commission adopted in the *Second R&O* provide competitive bidding benefits to small businesses that will enable them to compete more effectively with larger auction participants. The Commission also believes that BETRS operators will be able to obtain interests in paging licenses or actual paging licenses through entering into partitioning arrangements both before and after the paging auctions. The

Commission emphasizes that it is committed to promoting service in rural areas and believes that the rules adopted for BETRS in the *Second R&O* will further that goal. If a BETRS operator demonstrates that it cannot serve a particular need in a rural area under these rules, the Commission will consider appropriate action to address specific concerns.

20. Petitioners contend that, contrary to the Commission's universal service goals, section 22.723 of the Commission's rules will allow geographic area licensees to terminate BETRS upon any allegation of harmful co-channel interference, resulting in a loss of communications services essential to the public in rural areas. Petitioners argue that the Commission must either retain existing rules or establish safeguards against allowing geographic area licensees to ''shut down BETRS operations.'' Another petitioner, however, seeks clarification that section 22.723 confers no right on rural radio service licensees to continue operations that cause actual interference to geographic area licenses for six months after receiving notice of the interference. The Commission affirms its earlier decision to allow BETRS licensees to obtain site licenses and operate facilities on a secondary basis. The Commission clarifies that under section 22.723 of its rules, the geographic area licensee must provide notification to the BETRS provider that the relevant BETRS facility causes or will cause interference with the geographic area licensee's service contour in violation of the Commission's interference rules. Where the BETRS facility would create interference with a facility the geographic area licensee is proposing to build, the geographic area licensee may not provide notification of impermissible interference to the BETRS provider earlier than six months prior to the date it intends to initiate operation of the proposed facility. Thus, the geographic area licensee may not force the BETRS provider to discontinue service before the geographic area licensee initiates service. Where the BETRS facility is constructed after the geographic area licensee's facility is already constructed and the BETRS facility causes interference with that existing facility, the BETRS operator must discontinue use of the interfering channel in accordance with the Commission's interference rules. Where a geographic area licensee plans construction and initially determines that the BETRS facility would not cause interference, but after construction determines the BETRS facility is causing interference, the BETRS operator must discontinue use of its facility within six months of receiving notification. If a dispute arises, either party may submit the interference information to the Commission to resolve the dispute. If the geographic area licensee provides proper notification to the BETRS provider, no adjustments will be made to the initial six month period. If the Commission determines that the notification was improper or inaccurate, the geographic area licensee, where appropriate, must submit a new, corrected notification to the BETRS provider. In the latter case, the six month period would restart.

21. Contrary to petitioners' argument, the Commission has not exceeded its statutory authority by employing competitive bidding procedures to issue geographic area paging licenses. Section 309(j) of the Communications Act, as amended, gives the Commission authority to issue geographic area paging licenses through competitive bidding. Petitioners have offered no evidence to support their assertion that revenue for the federal treasury ''appears to be the real reason for the Commission's proposal.'' The recovery of a portion of the value of the public spectrum made available through competitive bidding does not amount to maximizing revenue, nor is it the Commission's sole objective.

22. Certain petitioners also argue that the Commission did not adequately consider adopting ''mandatory partitioning'' of rural areas of the geographic area license, at no cost to the rural telephone company, to offset the unwillingness of geographic area licensees to enter into agreements for the provision of BETRS service. The Commission affirms its conclusion in the *Second R&O* that BETRS licensees may acquire partitioned licenses from other licensees by: (1) participating in bidding consortia; or (2) acquiring partitioned licenses from other licensees through private negotiation and agreement either before or after the auctions. The Commission has no reason to believe that auction winners will not be willing to enter into partitioning arrangements. Petitioners themselves argue that winning geographic area licensees may have no desire or intention to build in rural areas. If this is true, there appears to be little incentive for these licensees to demand unreasonable amounts of money for the rural portion of a license prior to or subsequent to the auction, especially if the choice is between selling to a willing buyer or leaving the rural area unserved. Where possible, the Commission encourages market forces and the business judgment of companies to dictate the formation of business relationships. The Commission believes voluntary agreements will be an adequate means of accommodating BETRS licensees seeking modifications to existing BETRS or wishing to establish new systems, and that mandatory partitioning is unnecessary.

*Spectrum Reversion*

23. The Commission reaffirms that where an incumbent permanently discontinues operations at a given site, as defined by the Commission's rules, the spectrum automatically reverts to the geographic area licensee. In the *Second R&O*, the Commission concluded that spectrum within a geographic area recovered by the Commission from a non-geographic area licensee should automatically revert to the geographic area licensee. The Commission found that granting this right to geographic area licensees would give them greater flexibility in managing their spectrum, establish greater consistency with cellular and PCS rules, and reduce the regulatory burdens on both licensees and the Commission with respect to future management of the spectrum.

24. One petitioner suggests that the Commission should clarify that recovered spectrum automatically reverts to the geographic area licensee in all instances except where an incumbent licensee discontinues operations in a location wholly encompassed by the incumbent licensee's valid composite interference contours. The petitioner argues that the geographic area licensee would not be able to serve such an area, and that reversion would be contrary to the Commission's policy of allowing fill-in transmitters anywhere within the incumbent's outer perimeter interference contour. The Commission disagrees. As an initial matter, the Commission notes that an incumbent's valid composite interference contour does not include areas surrounded by the composite interior contour that is not part of the interference contours of the incumbent's individual sites. The Commission further finds that the petitioner has not demonstrated that a geographic area licensee would be unable to serve areas wholly surrounded by an incumbent; such service by the geographic area licensee would be subject to the Commission's interference rules. Moreover, where an incumbent discontinues service to an area, the Commission does not believe it serves the public interest to withhold that area from the geographic area licensee in the hope that the incumbent may wish to

resume service sometime in the future. Should an incumbent desire to serve the reverted area in the future, it is free to reach an agreement with the geographic area licensee for the partitioning of this area. This approach is consistent with the Commission's treatment of reverted spectrum in the 800 MHz SMR service, and it is in the public interest, as it promotes use of the spectrum.

*System-wide Licensing*

25. The Commission clarifies certain aspects of its rules regarding system-wide licensing. In the *Second R&O,* the Commission allowed all incumbent paging licensees to either continue operating under existing authorizations or trade in their site-specific licenses for a single system-wide license. The Commission stated that such a system-wide license would be demarcated by the aggregate of the interference contours around each of the incumbent licensee's contiguous sites operating on the same channel. The Commission also concluded that incumbent licensees may add or modify sites within their existing interference contours without filing site-specific applications, but may not expand their existing interference contours without the consent of the geographic area licensee.

26. Although system-wide licenses and site-specific licenses are identical in terms of operational and technical flexibility, some licensees may realize administrative benefits from consolidating site-specific licenses. Petitioners seek clarification of the procedures for converting site-specific licenses to a system-wide license. In the *ULS Order* (63 FR 856163, December 14, 1998), the Commission stated that conversions from site-specific to system-wide licenses are minor modifications subject to the Commission's prior approval. Applicants requesting a system-wide license will be notified by public notice of the action taken on their request and public notices granting such requests will indicate the new call sign associated with the system-wide license. The expiration date of the system-wide license will be determined by the earliest expiration date of the site-specific licenses that are consolidated into the system-wide license. Once a system-wide license is approved, the licensee must submit a timely renewal application for the system-wide license based on that expiration date. The Commission emphasizes, however, that the licensee is solely responsible for filing timely renewal applications for site-specific licenses included in a system-wide license request until the request is approved. If the situation arises where a site-specific renewal application for a site included in a system-wide license request and the system-wide license request itself are pending at the same time before the Wireless Telecommunications Bureau, the Bureau may elect to complete the site-specific license renewal proceeding prior to making a determination on the system-wide license request. Renewal applications will be placed on public notice as accepted for filing pursuant to the Commission's rules. To minimize administrative burdens on licensees and conserve government resources, the Bureau will use electronic filing to the greatest extent possible in accepting and processing these applications.

27. Several petitioners seek clarification of the definition of ''contiguous sites'' for the purpose of determining an incumbent's ''aggregate interference contour.'' Petitioners also urge the Commission to modify section 22.503(i) to define non-geographic area incumbent systems according to the composite interference contours of all authorized transmitters, including valid construction permits, regardless of the grant date. The Commission has consistently stated that system-wide licenses are defined by interference contours and it now clarifies that contiguous sites are defined by overlapping interference contours, not service contours. The Commission further clarifies that all authorized site-specific paging licenses and construction permits are included in a composite interference contour. The Commission is continuing to process site-specific applications that were not mutually exclusive and were filed prior to July 31, 1996, and it will not revoke authorized construction permits before the construction deadline. In addition, the Commission is continuing to resolve pending petitions that might result in grants of applications. The Commission also notes that for purposes of due diligence it intends to release, prior to auction, a list of site-specific applications and petitions pending at that time. Accordingly, the Commission amends section 22.503(i) to clarify that geographic area licensees must provide co-channel interference protection in accordance with sections 22.537 or 22.567, as appropriate for the channel involved, to all authorized co-channel facilities of exclusive licensees within the paging geographic area.

28. Petitioners also contend that system-wide licenses should include areas where an incumbent's interference contours do not overlap, but where no other licensee could place a transmitter because of interference rules. The Commission concludes that a system-wide license is merely a consolidation of a system's call signs such that one call sign will be associated with the system-wide license. The contours of the system-wide license remain as the aggregate of the contours of the individual sites. The Commission finds that inclusion of areas that are outside of an incumbent's interference contours within a system-wide license would be contrary to the Commission's objective of prohibiting encroachment on the geographic area licensee's operations. A system-wide license is not intended to expand an incumbent's system beyond the contours of its individual sites. Incumbent licensees seeking to expand their contours may participate in the auction of geographic area licenses, or may seek partitioning agreements with the geographic area licensee.

29. One petitioner seeks clarification as to whether the discontinuance of operation of an interior site would jeopardize a system-wide license. Where a system-wide licensee allows an area within its system to revert to the geographic area licensee, the system-wide license shall remain intact; however, the parameters of the system-wide license shall be amended to the demarcation of the remaining contiguous interference contours.

30. The Commission will allow licensees to include in system-wide licenses remote, stand-alone transmitters that are linked to contiguous systems via control/repeater facilities or by satellites. Including these remote, stand-alone sites in the system-wide license, however, in no way expands the licensee's composite interference contours. The Commission will also permit licensees to maintain separate site-specific licenses for remote, stand-alone transmitters. The Commission further finds that an incumbent licensee should be permitted to obtain multiple system-wide licenses where applicable.

*Interference*

31. The Commission affirms its earlier decision to use Tables E–1 and E–2 to determine interference contours for both perimeter and ''fill-in'' transmitters. Co-channel interference rules are designed to protect licensees from interference caused by other licensees operating facilities on the same channel. Exclusive paging systems are protected from co-channel interference by a variety of rules that govern transmitter height and power, distance between transmission stations, the licensee's protected service area, and the field strength of the licensee's service and interfering signals. For the CCP channels below 931 MHz, the Commission uses

mathematical formulas to determine the distance from each transmitting site to its service and interference contours along the eight cardinal radials from the transmitter site. To determine service and interference contours for the 931 MHz channels, the Commission uses two tables of fixed radii, Tables E–1 and E–2. Prior to adoption of the *Second R&O,* for the 929 MHz exclusive channels, the Commission used geographic separation rules that agreed with the separations that result from the application of the fixed radii tables for 931 MHz. Unlike the Commission's CCP rules, at that time, the PCP rules did not formally define a protected service or interference contour for each station.

32. In the *Notice,* the Commission proposed to adopt the eight-radial contour method and new mathematical formulas, rather than fixed tables, to determine the service and interference contours for the exclusive 929 MHz and 931 MHz channels. The commenters addressing this issue strenuously objected to the Commission's proposal, stating that the proposed method could require incumbents to reduce coverage or be required to accept interference from geographic area licensees. Consequently, the Commission decided not to adopt the proposed formulas. The Commission did, however, adopt Tables E–1 and E–2 for the exclusive 929 MHz channels, thus maintaining the *status quo* for 931 MHz channels and conforming 929 MHz channels to the current procedures for 931 MHz channels.

33. Several petitioners now request that instead of using Tables E–1 and E–2, the Commission permit incumbents to employ alternative formulas to determine the interference contours of ''fill-in'' transmitters. One petitioner suggests using signal strength criteria, rather than alternative formulas, for determining the interference contours of ''fill-in'' transmitters. The Commission does not find that permitting incumbents to use different formulas for ''fill-in'' transmitters will serve the public interest. The record in this proceeding supports the decision to use Tables E–1 and E–2 to determine interference and service contours for all 929 MHz and 931 MHz transmitters. The Commission finds that to permit incumbents to add sites under alternative formulas depending on the location and power of each of their transmitters significantly raises the risk of encroachment on a geographic area licensee's territory. In addition, the incumbent will have the opportunity to cover any existing gaps in coverage by either competing for the geographic area license or by partitioning from the geographic area licensee.

34. The Commission affirms its previous conclusion to require geographic area licensees to negotiate to resolve interference problems with adjacent geographic area licensees. In the *Second R&O,* the Commission concluded that geographic area licensees should be able to negotiate mutually acceptable agreements with all adjacent geographic area licensees if their interfering contours extend into other geographic areas. The Commission also indicated that adjacent licensees have a duty to negotiate in good faith with one another regarding co-channel interference protection. The Commission noted that lack of adequate service to the public because of failure to negotiate reasonable solutions with adjacent geographic area licensees could reflect negatively on licensees seeking renewal.

35. Certain parties now seek clarification of the good faith negotiation requirement, arguing the standard is vague and invites litigation. One petitioner further notes that while the cellular industry has negotiated agreements, paging coordination will be more difficult because paging carriers operate on only one frequency, while cellular carriers have many channels with which to negotiate. The *Second R&O* adopted the good faith standard to provide flexibility for licensees to negotiate mutually acceptable agreements. Providing for adjacent geographic area licensees to negotiate mutually acceptable agreements should reduce the amount of unserved area that could result from specifying a minimum distance a geographic area licensee's transmitter must be from a geographic border. In other services, such as the Multipoint Distribution Service (MDS), the Commission has expected licensees to cooperate among themselves to resolve interference issues before bringing them to the attention of the Commission. Based on the limited number of interference complaints that it has been called upon to resolve, the Commission believes this policy has worked well in the MDS service. Moreover, none of the parties have proposed a better way to achieve flexibility and the reduction of unserved areas.

36. The Commission clarifies various issues regarding channel exclusivity on the 929–930 MHz bands. Prior to 1993, all PCP channels were assigned on a non-exclusive basis. In 1993, the Commission established rules allowing PCP carriers in the 929–930 MHz band to obtain channel exclusivity as local, regional, and nationwide paging systems on thirty-five of the forty 929 MHz PCP channels. Those licensees that qualified for exclusivity as a local, regional, or nationwide system at that time were grandfathered as exclusive licensees, and required to maintain their existing sharing arrangements with other licensees, but were protected from the addition of other licensees on these channels. Thus, no application for a new paging site would be granted on a channel assigned to an incumbent who qualified for exclusivity if the applicant proposed a paging facility that did not comply with the separation standards based on antenna height and transmitter power of the respective systems. All other incumbent licensees were grandfathered with respect to their existing systems as shared licensees, and required to continue to share channels with each other. The Commission notes that grandfathered licensees could not add stations to their existing systems in areas where a co-channel licensee had qualified for exclusivity. Therefore, on these thirty-five 929 MHz channels, the Commission has: (1) exclusive incumbents: grandfathered exclusive systems that are exclusive with respect to new licensees, but share with other grandfathered licensees; (2) non-exclusive incumbents: grandfathered shared licensees; (3) licensees who failed to construct enough sites to qualify for exclusivity under the *PCP Exclusivity Order* (considered ''secondary'' with respect to licensees with earned exclusivity); and (4) licensees with earned exclusivity. In the *Second R&O,* the Commission concluded that geographic area licensees must provide co-channel protection to all incumbent licensees.

37. Certain petitioners seek clarification as to whether non-exclusive 929 MHz licensees operating on the thirty-five exclusive channels (*i.e.,* categories 2 and 3 in the above paragraph) will receive the same interference protection as an exclusive licensee. Other petitioners seek clarification that the Commission did not elevate incumbent licensees operating on shared channels to exclusive status. One petitioner specifically argues that section 22.503(i) will require that nationwide geographic area licensees terminate sharing arrangements they have with non-exclusive licensees and provide interference protection to them, while another contends that section 22.503(i) does not require the termination of existing channel sharing arrangements involving exclusive incumbent licensees and non-exclusive incumbent licensees. Non-exclusive incumbent licensees on

the thirty-five exclusive 929 MHz channels will continue to operate under the same arrangements established with the exclusive incumbent licensees and other non-exclusive incumbent licensees prior to the adoption of the *Second R&O*. The Commission further clarifies that MEA, EA, and nationwide geographic area licensees will be able to share with non-exclusive incumbent licensees on a non-interfering shared basis. The non-exclusive incumbent licensees must cooperate with the nationwide and geographic area licensees' right to share on a non-interfering shared basis. Accordingly, the Commission amends section 22.503(i) to clarify that nationwide and geographic area licensees are afforded the right to share with non-exclusive incumbent licensees on a non-interfering shared basis. As for shared PCP channels, the Commission concluded in the *Second R&O* that licensees on these channels will not be converted to exclusive status and that these channels will not be subject to competitive bidding. Therefore, licensees on these shared channels will continue to share with any future licensees.

38. The Commission declines to grant one petitioner's request to grant full interference protection to existing control link operations on the UHF and VHF paired channels originally allocated for mobile telephone service once the ''auction for the UHF and VHF common carrier channels'' is completed. The petitioner contends that in reliance on the Commission's proceeding in CC Docket 87–120, which permitted paging carriers to use these two-way channels as control links, ''numerous carriers have configured their paging systems on [the] basis of their protected use of a VHF or UHF frequency to link their base stations.'' Another petitioner requests clarification as to whether incumbent mobile telephone service providers operating on the lower paging frequencies will be protected from interference from geographic area licensees. Furthermore, the petitioner requests that incumbent mobile telephone service providers be permitted to obtain additional site licenses on a secondary basis.

39. The Commission concludes that the petitioner's request to protect control link operations is unclear and outside the scope of this proceeding. The Commission's rules do not generally provide protection from interference to fixed stations and the petitioner's request would require a rulemaking to develop interference criteria, which is beyond the scope of this proceeding. In addition, the petitioner's request is unclear. For example, the petitioner does not specify whether any protection provided should apply to the mobile channel used as a control link or the base channel used as a control link. The Commission therefore denies the request. With respect to the request for clarification, the Commission reiterates that geographic area licensees must provide co-channel protection to all incumbent licensees, including incumbent mobile telephone service providers operating on the 150 MHz and 450 MHz bands.

40. The Commission will not, however, grant the petitioner's request that incumbent mobile telephone service providers be permitted to obtain additional site licenses on a secondary basis. While the Commission is generally aware that two-way incumbent mobile telephone service providers serve rural areas in the western part of the country, the petitioner provides no information at all for determining whether to permit incumbent mobile telephone service providers to operate facilities on a secondary basis. The Commission therefore denies the request.

*Shared Channels*

41. The Commission affirms its decision to not impose a limit or ''cap'' on the number of licensees for each of the shared channels. In the *Notice*, the Commission sought comment on whether to use geographic area licensing for the shared PCP channels in the 152–158 MHz, 462 MHz, and 465 MHz bands. Most commenters who responded to this issue in the Notice were opposed to geographic area licensing for the shared channels and sought to retain the *status quo*. In the *Second R&O*, the Commission found that the cost and disruption caused by converting shared channels to exclusive channels and subjecting them to competitive bidding would outweigh the benefits. The Commission did not impose a limit or ''cap'' on the number of licensees for each of the shared channels, as it found that capacity limits of paging channels are based primarily on use and not the number of licensees. Thus, ''capping'' the number of licensees would not necessarily ensure efficient spectrum use. The Commission also determined in the *Second R&O* that pending the resolution of issues related to consumer fraud addressed in the *Further Notice*, it would retain the interim licensing rules, which limited applications to incumbents seeking to expand their systems. The Commission did, however, eliminate the 40-mile requirement for new sites, allowing incumbents to file for new sites at any location. Finally, noting that it would not grant applications proposing operations on a commercial basis, the Commission allowed new applicants to file applications for private, internal-use systems, and reiterated that Special Emergency Radio Service providers would remain exempt from the licensing freeze and could continue to file applications on shared channels.

42. Petitioners oppose granting new applicants licenses for private, internal-use systems, alleging that allowing new applications would encourage speculative applications and result in harmful congestion on the shared PCP channels. As a remedy, petitioners urge the Commission to retain the interim rules, which limit the filing of new applications primarily to incumbents. Petitioners further urge the Commission to limit incumbents' expansion applications to sites that are within 75 miles of an existing facility, in lieu of the 40-mile requirement that the Commission has eliminated, to deter incumbents from filing speculative applications, and ask that the Commission permit applications from public safety and medical services providers for shared channels only upon certification that no public safety channels are available to meet those providers' needs.

43. The Commission does not believe that eliminating the opportunity for new licensees to establish service on shared channels serves the public interest because it does not promote efficient use of spectrum. The Commission does not believe that concerns about speculation or congestion on shared channels are sufficient at this time to warrant additional burdens on new applicants. The Commission's goal is to increase the use of these shared channels, not to unduly restrict access to them. Therefore, the Commission affirms its previous decision and declines to impose limits on the number of licensees for each channel in a particular area. The Commission will take further action if it finds that the transition of the exclusive channels to geographic area licensing results in congestion and interference problems on the shared channels. The Commission also declines to adopt a certification requirement for public safety providers. Finally, as described below, the Commission will be removing the interim licensing rules on all the shared paging channels. Accordingly, the Commission declines to impose any mileage limitations on expansion applications to provide service on shared paging channels.

44. One petitioner contends that the Commission should reconsider its

decision not to subject the five 929 MHz non-exclusive channels to competitive bidding. The Commission declines to reconsider this decision. Petitioner's arguments to include shared channels in competitive bidding are effectively a request to limit the number of licensees authorized to operate on shared channels. As previously stated, the Commission declines to impose limits on the number of licensees for each channel in a particular area.

45. The Commission also denies another petitioner's request to adopt specific interference rules for shared frequencies, and provide shared frequency licensees with some form of exclusivity protection. In the *Second R&O*, the Commission found that shared channels are heavily used by incumbent systems, many of whom have entered into time-sharing or interconnection agreements to avoid interference with one another. The Commission believes the imposition of specific interference requirements at this time could jeopardize the viability of some of these existing relationships.

*Coordination with Canada*

46. The Commission clarifies rules regarding coordination requirements with Canada. The Commission states that it is bound by international agreement to coordinate with the Canadian government (Industry Canada) stations using certain frequencies north of Line A or east of Line C. Incumbent and geographic area licensees on the lower paging channels must submit a Form 600 (or Form 601) to obtain authorization to operate stations north of Line A or east of Line C because the lower paging channels are subject to the *Above 30 Megacycles per Second Agreement* with Industry Canada. The *U.S.-Canada Interim Coordination Considerations for the Band 929–932 MHz, as amended,* assigns specific 929 and 931 MHz frequencies to the United States for licensing along certain longitudes above Line A, and assigns other specific 929 and 931 MHz frequencies to Canada for licensing along certain longitudes along the U.S.-Canada border. As a result, the Commission notes that frequency coordination with Canada is not required for the 929 and 931 MHz frequencies that U.S. licensees are permitted to use north of Line A pursuant to that agreement. In addition, the 929 and 931 MHz frequencies assigned to Canada are unavailable for use by U.S. licensees above Line A as set out in the agreement. Finally, the Commission is implementing electronic filing and automated coordination procedures to the extent practical and allowable under its agreements with Canada.

*Power Requirements*

47. The Commission clarifies that 929 MHz licensees, with certain limitations, do not need to file a modification application to increase the effective radiated power (ERP). Thus, the Commission states that licensees may modify power levels without filing a modification application only to the extent that their composite interference contour, as determined by Table E–2, remains constant or decreases. Again, the Commission restates that, pursuant to the *First R&O,* an incumbent licensee is not permitted to increase its composite interference contour.

*Coverage Requirements*

48. The Commission reaffirms coverage requirements for MEA and EA licensees. In the *Second R&O,* the Commission concluded that for each MTA or EA the geographic area licensee must provide coverage to one-third of the population of the entire area within three years of the license grant, and to two-thirds of the population of the entire area within five years of the license grant; or in the alternative, the MTA or EA licensee may provide substantial service to the geographic license area within five years of license grant. In addition, the Commission concluded that failure to meet the coverage requirements would result in automatic termination of the geographic area license. The Commission stated that it would reinstate any licenses that were authorized, constructed, and operating at the time of termination of the geographic area license.

49. One petitioner advocates requiring the geographic area licensee to provide coverage to one-third of the market area within one year, and two-thirds within three years. Other petitioners argue, however, that small companies will have difficulty meeting these suggested coverage requirements, especially if they must construct in rugged areas with low population density to cover two-thirds of the population. The Commission declines to adopt the proposal. The Commission believes that its previously adopted coverage requirements adequately promote prompt service to the public without being unduly burdensome on licensees that require a reasonable amount of time to complete construction. The Commission finds that areas which are currently unserved have remained so in spite of the fact that paging service has existed for many years and is extremely competitive in some markets. This finding suggests that providers of service in these areas may face unusual difficulties. Moreover, the Commission finds that overly stringent coverage requirements would unfairly favor incumbents by erecting a formidable barrier to entry.

50. Petitioners argue that the ''substantial service'' alternative should be eliminated because it will encourage speculation, greenmail and anticompetitive conduct. However, in some MEAs or EAs, an incumbent licensee may already serve more than one-third of the population. The elimination of the substantial service alternative would prevent a potential co-channel licensee other than the incumbent from bidding in these markets because the five-year coverage requirement could only be satisfied by the incumbent. The option of providing a showing of substantial service allows those MEA and EA licensees who cannot meet the three-year and five-year coverage requirements because of the existence of incumbent co-channel licensees to satisfy a construction requirement. Moreover, the Commission recognizes that the unserved areas of many MEAs and EAs are rural areas that may be more difficult to serve than urban areas. The Commission thinks it is in the public interest to encourage build-out in rural areas by allowing licensees to make a substantial service showing. Further, the substantial service option enables licensees to use spectrum flexibly to provide new services without being concerned that they must meet a specific percentage of the coverage benchmark or lose their license.

51. Certain petitioners argue that the vagueness of the definition of ''substantial service'' will result in an abundance of litigation. One petitioner suggests that substantial service could be defined as coverage of fifty percent at three years, and seventy-five percent at five years, of the geographic area that is not served by co-channel incumbent licensees; and that the Commission could require licensees to show a specified level of infrastructure investment by the three-year and five-year deadlines. Another petitioner suggests that the Commission provide specific examples of what construction levels would satisfy the substantial service test.

52. The Commission declines to adopt specific coverage requirements as the sole means of defining ''substantial service.'' As already noted, the unserved area of an MEA or EA license (i.e., the area not served by co-channel incumbent licensees at the time the MEA or EA license is granted) may consist largely of spectrum in rural

areas. The Commission believes that imposing strict coverage requirements to define substantial service in the unserved area would discourage new entrants from attempting to acquire licenses to serve rural areas. Nonetheless, the Commission finds that establishing an objective criterion as one means of meeting the substantial service option in the unserved areas of an MEA or EA would be useful. Therefore, the Commission will presume that the substantial service coverage requirement is satisfied if an MEA or EA licensee provides coverage to two-thirds of the population in the unserved area of the MEA or EA within five years of license grant.

53. At the same time, the Commission recognizes the need for flexibility in areas where stringent coverage requirements would discourage provision of any service. Therefore, the Commission clarifies that an MEA or EA licensee may be able to satisfy the substantial service requirement even if it does not provide coverage to two-thirds of the population in the unserved area within five years of license grant. The Commission offered guidance to WCS licensees with regard to factors that it would consider in evaluating whether the substantial service requirement has been met, and the Commission now applies this additional guidance to paging licensees. Thus, the Commission may consider such factors as whether the licensee is offering a specialized or technologically sophisticated service that does not require a high level of coverage to be of benefit to customers, and whether the licensee's operations serve niche markets. A licensee may also demonstrate that it is providing service to unserved or underserved areas without meeting a specific percentage, as the Commission permitted SMR providers in the 800 MHz band to do. Because the substantial service requirement can be met in a variety of ways, the Wireless Telecommunications Bureau will review licensees' showings on a case-by-case basis.

54. Petitioners request clarification as to whether licensees who fail to meet coverage requirements will be permitted to retain licenses for those facilities authorized, constructed, and operating at the time the geographic area license is cancelled, or only those authorized, constructed, and operating at the time of grant of the geographic area license. The Commission agrees with the argument that licenses reinstated after termination of the geographic area license should be limited to the sites authorized, constructed, and operating at the time the geographic area license was granted. In other words, the right to use channels any place in the geographic area will be forfeited, but any licenses for which individual sites were constructed and operating prior to the grant of the geographic area license will be reinstated. The Commission believes that this approach properly balances its overarching goal of ensuring, to the extent possible, continuous service to the public and the Commission's policy of discouraging speculation and spectrum warehousing. Accordingly, the Commission amends section 22.503(k) to provide that licensees who fail to meet their coverage requirements will be permitted to retain licenses only for those facilities authorized, constructed, and operating at the time the geographic area license was granted. In such instances, incumbent licensees will have the burden of showing when their facilities were authorized, constructed, and operating, and they should retain necessary records of these sites until they have fulfilled their construction requirements.

*Geographic Area Licensing for Nationwide Channels*

55. The Commission affirms its decision in the *Second R&O* to grant nationwide geographic area licenses without competitive bidding to those licensees that met the exclusivity criteria established under its previous rules. The *Second R&O* awarded nationwide geographic area licenses on three 931 MHz channels and to the eighteen licensees who had constructed sufficient stations to obtain nationwide exclusivity on 929 MHz channels under the Commission's rules as of February 8, 1996. In addition, the Commission granted nationwide geographic area licenses to four licensees on the 929 MHz band that had sufficient authorizations, as of February 8, 1996, to qualify for nationwide exclusivity on a conditional basis, but had not completed build-out at that time. The Commission also granted nationwide exclusivity to Nationwide 929.8875 LLC on 929.8875 MHz based on showings that it had met the criteria for nationwide exclusivity as of February 8, 1996.

56. Certain petitioners argue that the exemption from competitive bidding for nationwide licensees is arbitrary and capricious because it results in similarly situated licensees being treated in a disparate manner. According to petitioners, incumbents that have met their five-year coverage requirement are similar to nationwide licensees that met the Commission's previous build-out requirements to qualify for exclusivity. The Commission does not believe that its decision to exempt nationwide licensees from competitive bidding discriminates against other paging systems. This decision merely recognizes licenses granted prior to this rulemaking proceeding. The exclusivity rules provided nationwide licensees with the right to continue to build out anywhere in the country on their designated channels, whereas non-nationwide paging licensees have been afforded no right to expand their service area beyond their interference contours. Thus, there are no areas available for auction on the channels on which nationwide geographic area licensees operate, while there are available areas on the channels on which non-nationwide licensees operate.

57. The Commission affirms its decision to deny Mobile Telecommunications Technologies, Inc. (MTel) a nationwide geographic area license on the 931.4375 MHz channel. The Commission disagrees with MTel's argument that denying MTel a nationwide grant on 931.4375 MHz is inconsistent with the Commission's grant of nationwide geographic area licenses to paging carriers in the 929 MHz band. The Commission recognizes that MTel is extensively licensed on 931.4375 MHz with over 800 transmitters in various locations throughout the United States. In addition, several other 931 MHz channels are extensively licensed by one carrier. But these 931 MHz channels, including 931.4375 MHz, have never been designated as nationwide channels. The Commission did not establish rules for a licensee to earn nationwide exclusivity on the thirty-seven channels in the 931 MHz band reserved for local and regional paging, as it did for the thirty-five exclusive 929 MHz channels, so MTel could not reasonably have expected to be granted nationwide status.

*Competitive Bidding*

58. The *MO&O* declines to adopt proposals regarding various operational aspects of the paging auctions, including: the sequence of the auctions (*e.g.*, auctioning the lower band channels prior to the upper band channels); modification of the hybrid simultaneous/license-by-license stopping rule adopted in the *Second R&O* (*e.g.*, replacing it with a market-by-market or license-by-license stopping rule); and the information disclosure to bidders during the Paging auctions (*e.g.*, whether bidder identities will be announced). The Commission concludes that, consistent with the Balanced Budget Act of 1997, the Wireless Telecommunications Bureau

will seek further comment on these matters during the pre-auction process. Doing so will allow the Bureau, pursuant to its delegated authority, to fully consider these matters in the unique context of the Paging auctions, and will provide adequate notice and opportunity for comment on auction procedures prior to the commencement of the auctions.

59. The *MO&O* declines to require paging auctions participants to identify on the FCC Form 175 each market for which they wish to bid and submit an upfront payment for each identified license. The Commission's current rules allow bidders to apply to bid for all available markets and submit an upfront payment that corresponds to the maximum number of bidding units on which a bidder expects to be active in a single round. The Commission believes that this approach provides bidders the flexibility to pursue back-up strategies and adequately protects against insincere bidding.

60. The *MO&O* rejects a proposal that the Commission modify its bid withdrawal rule to allow the withdrawal of high bids placed due to typographical or clerical error. The Commission concludes that recent modifications to its bid software adequately protect against the placement of erroneous bids. The *MO&O* also rejects petitions for reconsideration of the Commission's decision to apply its general anti-collusion rule, *see* 47 CFR 1.2105(c), in the Paging auctions. These petitions seek safe harbors for business discussions regarding such topics as mergers/consolidations and intercarrier agreements. The Commission concludes that sufficient guidance regarding application of the anti-collusion rule currently is readily available, and that applicants, not the Commission, are in the best position to determine whether their conduct or discussions may give rise to a potential violation of the rule.

61. In response to petitions for clarification of the Commission's attribution rules and small business definitions, the *MO&O* clarifies that personal net worth is not attributable for purposes of determining eligibility for small business bidding credits, and that controlling interests in an applicant are not required to hold a minimum amount of equity. In addition, the *MO&O* adopts a definition of ''controlling interest,'' which focuses on the concepts of *de jure* and *de facto* control, to further clarify the application of the attribution rule. Moreover, the *MO&O* declines to conclude that intercarrier agreements among otherwise independent entities do not constitute affiliation under the Commission's Rules, and explains that such agreements may rise to the level of affiliation if they meet the criteria set forth in the affiliation rule, *see* 47 CFR 22.223(d).

62. Finally, although the *MO&O* declines to eliminate the availability of bidding credits for small businesses, it does eliminate the availability of installment payments for these entities. This action is consistent with the Commission's prior decision in *Part 1 Third R&O and Second Further Notice* (63 FR 2315, January 15, 1998), to eliminate installment payments for all future auctions, including the Paging auctions. To balance the impact of this action, however, the *MO&O* increases the level of bidding credits available to small and very small businesses respectively from ten percent to twenty-five percent, and from fifteen percent to thirty-five percent. These amounts are based on the schedule of bidding credits adopted in the *Part 1 Third R&O and Second Further Notice*. Finally, the *MO&O* further conforms the paging competitive bidding rules with the Commission's general competitive bidding rules by allowing winning bidders to make their final payments within ten business days of the deadline, provided they also pay a late fee equal to five percent of the amount due. These actions will allow participants in the Paging auctions to enjoy the same advantages as bidders in other recent spectrum auctions.

*Third Report and Order*

63. In the *Second R&O*, the Commission adopted rules governing geographic area licensing of paging systems for exclusive channels in the 35–36 MHz, 43–44 MHz, 152–159 MHz, 454–460 MHz, 929–930 MHz, and 931–932 MHz bands allocated for paging. The Commission adopted competitive bidding rules for granting mutually exclusive applications, adopted partitioning for non-nationwide geographic area licenses, imposed coverage requirements on non-nationwide geographic area licenses, and awarded nationwide geographic area licenses on the 929 MHz and 931 MHz bands. The Commission concurrently adopted a *Further Notice* seeking comment on whether it should adopt coverage requirements for nationwide geographic area licenses, various rules related to partitioning and disaggregation by paging licensees, and whether the Commission should revise the application procedures for shared channels.

*Coverage Requirements for Nationwide Geographic Area Licenses*

64. The Commission elects to defer a decision on whether to impose coverage requirements on nationwide geographic area licensees. As discussed in the *MO&O*, the Commission designated three channels in the 931 MHz band for exclusive nationwide use. In 1993, to encourage the development of wide-area paging systems, the Commission also implemented exclusive licensing of qualified local, regional, and nationwide paging systems on thirty-five of the forty 929 MHz channels licensed, at that time, under Part 90 of its rules. In the *Second R&O*, the Commission noted that its existing Part 22 and Part 90 requirements for construction of nationwide systems were not consistent, and both sets of requirements differ from the construction and coverage requirements applicable to nationwide narrowband PCS licenses. As a result, the Commission sought comment in the *Further Notice* on whether to impose minimum coverage requirements for nationwide paging licenses, and on what the appropriate coverage area should be. The Commission also sought comment on whether it should auction the entire nationwide license, or just a portion of the license, if the licensee fails to meet the coverage requirements.

65. The Commission rejects the constitutional and statutory arguments commenters make in opposition to coverage requirements. The Commission also disagrees with several commenters that argue that nationwide licensees' compliance with existing rules created a reasonable expectation that they would enjoy exclusivity on a nationwide basis, and imposing additional coverage requirements would improperly subject those licensees to retroactive rulemaking. Certain commenters also argue against nationwide coverage requirements on the basis that nationwide licensees are not similarly situated with either MEA/EA paging licensees or narrowband PCS licensees. Commenters that oppose coverage requirements also oppose any cancellation of nationwide licenses based on a failure to meet such requirements.

66. While petitioners have not persuaded the Commission that there are any legal impediments to the adoption of coverage requirements for nationwide geographic area paging licensees, the Commission concludes that it is best to defer any decision on this issue until the Commission resolves similar issues raised in the *Narrowband PCS Further Notice* (62 FR 27507, May 20, 1997). Doing so will allow the

Commission to more fully consider the question of whether regulatory parity with respect to coverage requirements is appropriate not only for nationwide and MEA/EA paging licensees, but also for nationwide paging and narrowband PCS carriers. In the *Narrowband PCS Further Notice*, the Commission sought comment on whether to conform its narrowband PCS coverage rules to its paging rules by allowing narrowband PCS licensees to meet their performance requirements through a demonstration of substantial service as an alternative to meeting the coverage requirements provided under the existing rules. The Commission further sought comment on whether to conform MTA-based narrowband PCS coverage requirements to the same requirements adopted for MTA and EA paging licenses in this proceeding. As a result, commenters in the *Narrowband PCS* proceeding have raised the issue of whether narrowband PCS, nationwide paging, and MTA/EA licensees provide substantially similar services. The Commission believes that it needs to consider this issue more carefully and to make a decision on nationwide paging coverage requirements in conjunction with a decision on narrowband PCS. Accordingly, the Commission defers resolution of whether to impose coverage requirements on nationwide paging geographic area licensees to the *Narrowband PCS Further Notice* proceeding. If it ultimately determines that coverage requirements are appropriate for nationwide paging geographic area licensees, the Commission will decide, at that time, what the consequence of failing to meet those requirements should be.

*Partitioning and Disaggregation*

67. In the *Second R&O*, the Commission adopted partitioning rules that permit all MEA and EA paging licensees to partition to any party eligible to be a paging licensee. In the *Further Notice*, the Commission sought comment as to whether nationwide geographic area licensees should also be permitted to partition their license areas. In the *Third R&O*, the Commission adopts rules that permit partitioning of nationwide geographic area licenses to any eligible party. The Commission agrees with the commenters that geographic partitioning would be an effective means of providing nationwide geographic area licensees with the flexibility to tailor their service offerings to meet market demands and facilitating greater participation in the paging industry by small businesses and rural telephone companies. The Commission found that the overall goal of partitioning—operational flexibility—outweighs any possible disadvantage of allowing nationwide licensees to receive a financial windfall though partitioning. Finally, consistent with the partitioning rules established for MEA and EA licensees, the Commission will permit partitioning of nationwide geographic area paging licenses based on any boundaries defined by the parties.

68. Under the rules adopted in the *Third R&O*, all MEA and EA licensees may partition at any time after the grant of their geographic area licenses, and all nationwide geographic area licensees may partition upon the effective date of this Order. The Commission established two options for parties to a partitioning agreement involving an MEA or EA license to satisfy coverage requirements. Under the first option, both the partitioner and partitionee are individually responsible for meeting the coverage requirements for their respective areas. Therefore, partitionees of MEA or EA licenses must provide coverage to one-third of the population in their partitioned area within three years of the initial grant of the license, and to two-thirds of the population in their partitioned area within five years of the initial grant of the license; or, licensees may provide, in the alternative, substantial service within five years of the grant of the MEA or EA license. The Commission states that failure by either party to meet its coverage requirements will result in the automatic cancellation of its license without further Commission action.

69. Under the second option, the original licensee may certify at the time of the partitioning transaction that it has already met, or will meet, the coverage requirements for the entire geographic area. The Commission states that only the partitioner's license will be cancelled if it fails to meet the coverage requirements for the entire geographic area. The Commission also states that the partitionee will not be subject to coverage requirements except for those necessary to obtain renewal. Finally, the Commission states that partitioners whose licenses are cancelled will retain those sites authorized, constructed, and operating at the time the geographic area license was granted.

70. The Commission rejects a proposal to eliminate the ''substantial service'' option because the Commission explains that this option will encourage licensees to build out their systems while safeguarding the financial investments made by those licensees who are financially unable to meet specific population coverage requirements. Thus, the Commission states that the substantial service alternative will promote service growth while helping licensees to remain financially viable and retain their licenses.

71. The Commission decided not to impose coverage requirements at this time on partitionees of a nationwide geographic area license, and will defer reaching a decision on this issue until it resolves the question of coverage requirements for nationwide licensees generally. The Commission believes that it would be inappropriate to subject entities that obtain partitioned licenses from nationwide geographic area licensees to coverage requirements when no such requirements have been established for partitioners. However, the Commission states that partitionees of nationwide licenses may be subject to coverage requirements in the future.

72. The Commission determined that partitionees should be authorized to hold their licenses for the remainder of the partitioner's original ten-year term. The Commission rejected a proposal that a partitionee receive a one-year term when any partitioning transaction occurs within one year of the renewal date of the original license because, in this instance, the partitioner would be conferring greater rights than it was awarded under the terms of its license grant. The Commission also found that a partitionee should be granted the same renewal expectancy as the partitioner; a Commercial Mobile Radio Services (CMRS) licensee will be entitled to a renewal expectancy if it demonstrates that it has provided substantial service during the license term and has complied with the Commission's rules and policies and the Communications Act.

73. Although several commenters oppose establishing disaggregation rules at this time, the Commission will permit MEA, EA, and nationwide geographic area licensees to engage in disaggregation. The Commission also will not impose a minimum limit on spectrum disaggregation in the paging service. The Commission concludes that the market should determine if paging spectrum is technically and economically feasible to disaggregate. In addition, the Commission notes that allowing disaggregation will encourage the further development of paging equipment capable of operating on less than 25 kHz. The Commission further concludes that allowing spectrum disaggregation at this time could potentially expedite the introduction of service to underserved areas, provide increased flexibility to licensees, and encourage participation by small businesses in the provision of services.

The Commission also finds that commenters have not provided sufficient evidence that interference to adjacent or co-channel licensees is a substantial risk that should preclude the Commission from allowing disaggregation of paging spectrum. The Commission finds that its existing technical rules provide parties with sufficient protection from interference. The Commission also believes that all qualified parties should be eligible to disaggregate any geographic area license. The Commission states that open eligibility to disaggregate spectrum promotes prompt service to the public by facilitating the assignment of spectrum to the entity that values it most.

74. The Commission establishes two options for parties to a disaggregation agreement involving an MEA or EA license to satisfy coverage requirements. Under the first option, which is the option proposed in the *Further Notice,* the parties may agree that either the disaggregator or the disaggregatee will be responsible for meeting the coverage requirements for the geographic service area. Under this option, the disaggregating party certifying responsibility for the coverage requirements of an MEA or EA license will be required to provide coverage to one-third of the population of the licensed geographic area within three years of license grant, and to two-thirds of the population within five years of license grant; or, in the alternative, provide substantial service to the geographic area within five years of license grant. Under the second option, the disaggregator and disaggregatee may certify that they will share the responsibility for meeting the coverage requirements for the entire geographic area. Under this option, both parties jointly will be required to provide coverage to one-third of the population of the licensed geographic area within three years of license grant, and to two-thirds of the population within five years of license grant; or, in the alternative, provide substantial service to the geographic area within five years of license grant.

75. The Commission recognizes that if the parties to a disaggregation agreement select the first option, situations may arise where a party minimally builds its system but will retain its license because the other party has met the coverage requirements for the geographic area. Nonetheless, the Commission believes that it is appropriate for one party to assume full responsibility for construction within the shared service area, because service would be offered to the required percentage of the population on a common frequency, even if not on the entire spectrum.

76. Under the first option, if the certifying party fails to meet the coverage requirements for the entire geographic area, that party's license will be subject to cancellation, but the non-certifying party's license will not be affected. However, if the parties to a disaggregation agreement select the second option and jointly fail to satisfy the coverage requirements for the entire geographic area, both parties' licenses will be subject to cancellation. The Commission notes that MEA or EA licensees whose licenses are cancelled will retain those sites authorized, constructed, and operating at the time the geographic area license was granted.

77. As the Commission did with respect to the issue of coverage requirements for partitionees of nationwide geographic area licenses, it will defer any decision on such requirements for disaggregatees of nationwide geographic area licenses until the Commission decides the question of whether to impose coverage requirements on nationwide geographic area licensees generally. Thus, the Commission notes that disaggregatees of nationwide licenses may be subject to coverage requirements in the future.

78. Disaggregatees will be authorized to hold licenses for the remainder of the disaggregator's original ten-year term. As the Commission concluded with respect to partitioners, the disaggregator should not be entitled to confer greater rights than it was awarded under the initial license grant. The Commission also concludes that a disaggregatee should be afforded the same renewal expectancy as the disaggregator. The Commission also concludes that carriers may engage in combinations of partitioning and disaggregation. As in other wireless services, the Commission further concludes that in the event there is a conflict in the application of the partitioning and disaggregation rules, the partitioning rules should prevail.

*Unjust Enrichment Provisions Regarding Partitioning and Disaggregation*

79. The Commission concludes that unjust enrichment provisions adopted in the *Part 1 Third R&O and Second Further Notice* will apply to any MEA or EA paging licensee that receives a bidding credit and later elects to partition or disaggregate its license. Specifically, the rules adopted in the *Part 1 Third R&O and Second Further Notice* indicate that if a licensee seeks to partition any portion of its geographic area, the amount of the unjust enrichment payment will be calculated based on the ratio of the population in the partitioned area to the overall population of the license area. In the event of disaggregation, the amount of the unjust enrichment payment will be based upon the ratio of the amount of spectrum disaggregated to the amount of spectrum held by the disaggregating licensee. When combined partitioning and disaggregation is proposed, the Commission will, consistent with its rules for other services, use a combination of both population of the partitioned area and amount of spectrum disaggregated to make these *pro rata* calculations. The Commission does not address how partitioning and disaggregation will affect installment payments because, in the *MO&O,* the Commission eliminated the use of installment payments for auctioned spectrum in the paging service.

*Application Fraud*

80. To deter fraud by application mills on the shared channels, the Commission will add language to the long-form application regarding construction and coverage requirements, and will disseminate information regarding its licensing rules and the potential for fraud through public notices and the Commission's website. The Commission is currently in the process of modifying FCC Form 601 to include language near the signature block that warns applicants that the failure of the licensee to construct may result in cancellation of the license. The Commission believes this language will be helpful to applicants in all services and may be of some use in deterring fraud. The Commission also applauds the measures taken by the Personal Communications Industry Association (PCIA) (frequency coordinator) to make applicants aware of the potential for fraud by applications mills.

81. Finally, once the Commission has completed the modification of FCC Form 601 to include warning language as described above, the Wireless Telecommunications Bureau will release a public notice that removes the interim licensing rules for both the lower band shared PCP channels and the five shared 929 MHz PCP channels. Presently, the interim paging rules for the shared PCP paging channels permit only incumbents to file for new sites at any location. The Commission allows non-incumbents to file applications, but only for private, internal-use systems. Once the interim licensing rules are removed, non-incumbents will be permitted to file applications on the shared PCP paging channels for new sites at any location. The Commission further notes that while frequency

coordination is no longer required on the exclusive paging channels, all applications for new sites filed on the shared PCP paging channels will continue to require frequency coordination prior to the filing of these applications with the Commission. Accordingly, the Commission amends section 90.175(f) to clarify that frequency coordination is only needed for shared frequencies in the 929–930 MHz band.

**Supplemental Final Regulatory Flexibility Analysis**

*Memorandum Opinion and Order on Reconsideration*

82. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in Appendix A of the *Notice* in this proceeding, and a Final Regulatory Flexibility Analysis (FRFA) was incorporated in Appendix C of the subsequent *Second R&O*. As described below, two petitions for reconsideration of the *Second R&O* raise an issue concerning the previous FRFA. The *MO&O* addresses those reconsideration petitions, among others. This associated Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) also addresses those petitions and conforms to the RFA.

**I. Need for and Purpose of this Action**

83. In the *Second R&O,* the Commission adopted rules for geographic area licensing of Common Carrier Paging and exclusive 929 MHz Private Carrier Paging and procedures for auctioning mutually exclusive applications for these licenses. The actions taken in this *MO&O* are in response to petitions for reconsideration or clarification of the *Second R&O*. Throughout this proceeding, the Commission has sought to promote Congress's goal of regulatory parity for all CMRS, and to encourage the participation of a wide variety of applicants, including small businesses, in the paging industry. In addition, the Commission has sought to establish rules for the paging services that will streamline the licensing process and provide a flexible operating environment for licensees, foster competition, and promote the delivery of service to all areas of the country, including rural areas.

**II. Summary of Significant Issues Raised in Response to the Final Regulatory Flexibility Analysis**

84. Priority Communications, Inc.'s (Priority) petition for reconsideration raises various issues, one of which is in direct response to the FRFA contained in the *Second R&O*. Priority states that the FRFA did not address alternatives to competitive bidding, *e.g.*, granting geographic area licenses, without competitive bidding, to incumbents of highly encumbered areas. The Commission disagrees with the contention that the Commission failed to consider alternatives to competitive bidding. In the *Second R&O,* the Commission considered and rejected proposals to retain site-by-site licensing for the paging industry. In rejecting the proposals, the Commission found that geographic area licensing provides flexibility for licensees and ease of administration for the Commission, facilitates further build-out of wide-area systems, and enables paging operators to meet the needs of their customers more easily. Moreover, the Commission concluded that geographic area licensing will further the goal of providing carriers that offer substantially similar services more flexibility to compete, and will enhance regulatory symmetry between paging and other service in the CMRS marketplace.

85. The Commission further concluded that it would grant mutually exclusive applications for geographic area licenses through competitive bidding even in areas extensively built out by an incumbent licensee. The Commission specifically considered and rejected proposals to award geographic area licenses, without competitive bidding, to any incumbent providing coverage to 70 percent or more of the population or to two-thirds of the population in the license area. Similarly, the Commission rejected a proposal not to hold auctions where an incumbent licensee is serving at least 50 percent of the geographic area or 50 percent of the population in that market. The Commission also considered and rejected proposals to award a dispositive preference in the auction to a licensee that provides service to one-third or greater of the population, or one-half or greater of the geographic area, or to restrict competitive bidding to incumbent licensees. In rejecting these proposals, the Commission concluded that market forces, not regulation, should determine participation in competitive bidding for geographic area licenses.

86. In its petition for reconsideration, the National Telephone Cooperative Association (NTCA) contends that the FRFA failed to address alternatives that parties suggested in response to the *Notice* to minimize the impact of the rule changes adopted in the *Second R&O* on small BETRS operators. NTCA specifically contends that the Commission did not address the investment BETRS operators would be unable to recover once they were required to terminate operations upon notification by a geographic area licensee of interference. NTCA further contends that the Commission did not address the adverse impact on small BETRS operators resulting from auctions that ''pit them against paging operations that have no interest in the site licenses needed for BETRS operations.'' Initially, the Commission notes that NTCA did not raise these issues in response to the *Notice.* NTCA has raised these issues only in response to the *Second R&O*. The Commission also disagrees with the contention that the Commission failed to consider alternatives that would minimize the impact on small BETRS operators. The Commission specifically found it unnecessary to adopt the plan that Puerto Rico Telephone proposed, under which (1) BETRS operators would be given preferential treatment over paging operators for mutually exclusive applications (on a site-by-site basis), and (2) the Commission would designate a frequency block for reallocated frequencies solely for BETRS use. Based on the potentially competitive environment in local exchange services, the Commission saw no basis for distinguishing BETRS from other commercial radio services that are auctionable under Section 309(j) of the Communications Act. Rather, the Commission determined that BETRS licensees should be required to participate in competitive bidding for paging licenses. In considering proposals to continue licensing BETRS facilities on a site-specific basis, the Commission decided that BETRS licensees could obtain site licenses on a secondary basis and enter into partitioning agreements with paging geographic area licensees. With respect to the issue of stranded costs, the *Second R&O* does not limit BETRS operators' options to that of obtaining licenses on a secondary basis. As already explained, they may also obtain co-primary licenses through partitioning. Moreover, the Commission has adopted specific procedures in the *MO&O* to limit the extent to which BETRS providers will be required to discontinue operations at secondary sites.

**III. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply**

87. The rules adopted in the *MO&O* will affect all small businesses that hold or seek to acquire commercial paging

licenses. As noted, a FRFA was incorporated into the *Second R&O*. In that analysis, the Commission described the small businesses that might be significantly affected at that time by the rules adopted in the *Second R&O*. Those entities include existing commercial paging operators and new entrants into the paging market. To ensure the more meaningful participation of small business entities in the auctions, the Commission adopted a two-tiered definition of small businesses in the *Second R&O*: (1) an entity that, together with its affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $3 million; or (2) an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. Because the Small Business Administration (SBA) had not yet approved this definition, the Commission relied in the FRFA on the SBA's definition applicable at that time to radiotelephone companies, *i.e.*, an entity employing less than 1,500 persons. Given the fact that nearly all radiotelephone companies had fewer than 1,000 employees, and that no reasonable estimate of the number of prospective paging licensees could be made, the Commission assumed, for purposes of the evaluations and conclusions in the FRFA, that all the auctioned 16,630 geographic area licenses would be awarded to small entities. In December 1998, the SBA approved the two-tiered size standards for paging services set forth in the *Second R&O*.

88. In the FRFA, the Commission anticipated that approximately 16,630 non-nationwide geographic area licenses will be auctioned. No party submitting or commenting on the petitions for reconsideration giving rise to this *MO&O* commented on the potential number of small businesses that might participate in the commercial paging auction and no reasonable estimate can be made. While the Commission is unable to predict accurately how many paging licensees meeting one of the above definitions will choose to participate in or be successful at auction, the *Third CMRS Competition Report* estimated that, as of January 1998, there were more than 600 paging companies in the United States. The *Third CMRS Competition Report* also indicates that at least ten of the top twelve publicly held paging companies had average gross revenues in excess of $15 million for the three years preceding 1998. Data obtained from publicly available company documents and SEC filings indicate that this is also true for the three years preceding 1999. While the Commission expects these ten companies to participate in the paging auction, the Commission also expects, for the purposes of the evaluations and conclusions in this Supplemental FRFA, that a number of geographic area paging licenses will be awarded to small businesses.

**IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

89. With one exception, this *MO&O* does not impose additional recordkeeping or other compliance requirements beyond the requirements contained in the *Second R&O*. If an MEA or EA licensee fails to meet its coverage requirements, that licensee will have the burden of showing which of its facilities were authorized, constructed, and operating at the time the geographic area license was granted. MEA and EA licensees will need to retain necessary records of any such facilities until they meet the geographic area license coverage requirements.

**V. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

90. The previous FRFA stated that the rules adopted for geographic area licensing will affect the Common Carrier Paging and exclusive 929 MHz Private Carrier Paging services. This Supplemental FRFA concludes that a number of geographic area commercial paging licenses may be awarded to small businesses. As described below, the Commission's actions taken to implement the transition to geographic area licensing and competitive bidding represent a balancing of various factors.

91. Certain petitioners suggested replacing Rand McNally MTAs with Major Economic Areas (MEAs) for the 929 MHz and 931 MHz bands. Considering these requests, the Commission has decided to adopt MEAs instead of MTAs. Because MEAs are composed of EAs, licensees with paging systems on both the lower channels and the 929 and 931 MHz bands, including small businesses, will be able to operate their systems more efficiently. The MEA designation will also enhance competition because paging systems on the lower channels, including small business paging systems, will be able to combine their EAs to form MEAs. In addition, the Commission considered and rejected a recommendation to use Basic Trading Areas (BTAs) for geographic area licensing on the lower paging bands. In rejecting the BTA designation, the Commission concluded that EAs, which the majority of commenters supported, best reflect the geographic area that the paging licensees on the lower channels seek to serve. The Commission also found that the use of EAs will not prevent paging operators of small systems from participating in the auction. The Commission noted that bidding credits will allow small businesses to compete against larger bidders. In addition, the Commission's partitioning rules will allow entities, including small businesses, to acquire licenses for areas smaller than EAs.

92. A number of petitioners have requested that the Commission reconsider its decision to grant mutually exclusive applications for geographic area licenses through competitive bidding even in areas extensively built out by an incumbent licensee. Again balancing various interests, the Commission has affirmed the use of competitive bidding to grant mutually exclusive paging applications. The Commission has rejected the petitioners' request because open eligibility promotes prompt service to the public by allocating spectrum to the entity that values it most. The Commission believes that the market should decide whether an economically viable paging system can be established in the unserved area of a geographic market. The Commission's decision on this issue will provide adjacent geographic area licensees and new entrants, including small businesses, with the opportunity to establish a viable system that serves the public as well as an incumbent. Moreover, the Commission sees no reason to give licensees that serve a substantial portion of a geographic area an advantage over other entities, including small businesses, that may also value the spectrum in that particular market.

93. Several petitioners request that the Commission clarify section 22.723 of its rules, which requires Rural Radiotelephone Service (RRS) licensees, including BETRS operators, to discontinue operations once the paging geographic area licensee notifies the RRS licensee that its co-channel secondary facilities may cause interference to the geographic area licensee's existing or planned facilities. The petitioners argue that the Commission's rules will allow geographic area licensees to terminate BETRS upon any allegation of harmful interference. In response to this concern, the Commission is adopting new procedures in the *MO&O* that geographic area licensees must follow in notifying a BETRS operator that its facility causes or will cause interference

with the geographic area licensee's service contour in violation of the Commission's interference rules. The new procedures limit the termination of operating BETRS co-channel secondary facilities until harmful interference would occur.

94. In the *Second R&O*, the Commission defined a system-wide license by the aggregate of the interference contours around each of the incumbent's contiguous sites operating on the same channel. The Commission also concluded that incumbent licensees may add or modify sites within their existing interference contours without filing site-specific applications, but may not expand their existing interference contours without the consent of the geographic area licensee. Several petitioners expressed confusion over the Commission's definition of ''contiguous sites'' for the purpose of determining an incumbent's ''aggregate interference contour.'' In addition, one petitioner asked that the Commission define ''composite interference contours'' to include all authorized transmitters, including valid construction permits, regardless of the grant date. Another petitioner requested that the Commission include remote transmitters within system-wide licenses, or in the alternative maintain separate licenses for any stand-alone or remote transmitter. Recognizing these concerns and balancing various interests as explained more fully in the *MO&O*, the Commission has maximized the definition of composite interference contour to reduce unnecessary regulatory burdens on licensees, reduce administrative costs on the industry, and thereby benefit consumers. In this regard, the Commission has clarified that contiguous sites, for the purpose of defining an incumbent's composite interference contour, are defined by overlapping interference contours, not service contours. The Commission further states that all authorized site-specific paging licenses and construction permits are included in a composite interference contour. Finally, the Commission has amended section 22.507 to allow system-wide licensees to maintain separate licenses for any stand-alone or remote transmitters, or to include remote and stand-alone sites within the system-wide license.

95. On a related matter, petitioners asked the Commission to allow reversion to the geographic area licensee of spectrum recovered from an incumbent in all instances except where an incumbent licensee discontinues operations in a location wholly encompassed by the incumbent's composite interference contour. In balancing the various relevant considerations, the Commission concluded that no demonstration had been made showing that the geographic area licensee would be unable to serve areas wholly surrounded by an incumbent. Moreover, the Commission does not believe the public interest would be served by withholding such areas from the geographic area licensee in hope that the incumbent will one day resume service to those areas. The Commission further noted that if incumbents, including small businesses, wish to serve reverted areas, they may seek to enter into partitioning agreements with the geographic area licensees. Similarly, a number of petitioners contended that system-wide licenses should include areas where an incumbent licensees' interference contours do not overlap, but where no other licensee could place a transmitter because of interference rules. The Commission considered and rejected this proposal, finding that inclusion of areas outside of an incumbent's interference contours would be contrary to the objective of prohibiting encroachment on the geographic area licensee's operations. Incumbents seeking to expand their contours, including small businesses, may participate in the auction or seek partitioning agreements with geographic area licensees.

96. In the *Second R&O*, the Commission elected not to impose a limit or ''cap'' on the number of licensees that may operate on shared paging channels. Two petitioners asked the Commission to reconsider that determination. Again, balancing the options, the Commission reaffirmed its prior decision. A ''cap'' would not promote efficient use of spectrum because the capacity limits on paging channels are based primarily on use and not the number of licensees. The Commission's goal is to increase the use of these shared channels, not to unduly restrict access to them. This decision will provide new entrants, including small businesses, with another opportunity to acquire paging spectrum.

97. In the *Second R&O*, the Commission also eliminated the Part 90 height and power limitations on 929 MHz stations and increased the maximum permitted effective radiated power (ERP) to 3,500 watts. Some petitioners have asked for clarification as to whether incumbent 929 MHz licensees must file a modification application to increase the current ERP for their base stations up to the maximum permissible. In response to this request, the Commission has clarified that incumbent 929 MHz licensees need not file a modification application to increase the ERP for base stations at any location, including exterior base stations, as long as they do not expand their existing composite interference contour. This clarification conforms the Commission's technical requirements for height and power with the general rule that incumbents need not file applications for internal system changes. Adopting this rule will minimize burdens on all entities, including small businesses, that increase the ERP of their base stations.

98. One petitioner advocated that the Commission make its coverage requirements more stringent by requiring geographic area licensees to provide coverage to one-third of the market area within one year, and two-thirds within three years. The Commission considered and rejected this proposal because it believes that the coverage requirements adequately promote prompt service to the public without being unduly burdensome on licensees, including small businesses, that need a reasonable amount of time to complete construction. Moreover, the Commission believes that overly stringent coverage requirements unfairly favor incumbents by erecting formidable barriers to new entrants, including small businesses. Several petitioners also requested that the Commission eliminate the ''substantial service'' option for meeting MEA or EA coverage requirements. The Commission rejected this request because the Commission believes that the ''substantial service'' option will facilitate build-out in rural areas, encourage licensees to provide new services, and enable new entrants to satisfy the Commission's coverage requirements in geographic areas where incumbents are already substantially built out. The Commission believes that rural service providers as well as new entrants are likely to include small businesses, and thus retaining the ''substantial service'' option should benefit small businesses. While the Commission will presume that the ''substantial service'' option is satisfied if an MEA or EA licensee provides coverage to two-thirds of the population in unserved areas within five years of license grant, the Commission declines to adopt specific coverage requirements as the sole means of defining ''substantial service.'' Giving licensees flexibility to satisfy the ''substantial service'' option in different ways should benefit small businesses.

99. In the *Part 1 Third R&O and Further Notice*, the Commission suspended the availability of installment payment financing for small businesses participating in future

auctions. Consistent with this decision, the *MO&O* rescinds installment payment financing for the paging auctions. To balance the impact of this decision on small businesses, however, the Commission is increasing the bidding credits available to qualifying entities. The revised rule conforms to a schedule of bidding credits adopted in the *Part 1 Third R&O and Second Further Notice*. Under this rule, an applicant will qualify for a twenty-five percent (25%) bidding credit if the average gross revenues for the preceding three years of the applicant, its affiliates and controlling interests do not exceed $15 million. Similarly, an applicant will qualify for a thirty-five percent (35%) bidding credit if the average gross revenues for the preceding three years of the applicant, its affiliates and controlling interests do not exceed $3 million. As the Commission stated in the *Part 1 Third R&O and Second Further Notice*, the Commission believes that these increased bidding credits will provide small businesses with adequate opportunities to participate in the paging auctions. Moreover, the Commission is further conforming the paging competitive bidding rules to the Part 1 rules by allowing winning bidders to make their final payments within ten (10) business days after the payment deadline, provided that they also pay a late fee of five (5) percent of the amount due. As the Commission stated in the *Part 1 Third R&O and Second Further Notice*, it believes that this additional ten-day period provides winning bidders with adequate time to adjust for any last-minute problems in arranging financing and making final payment.

**VI. Report to Congress**

100. The Commission will send a copy of the *MO&O*, including this Supplemental FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the *MO&O*, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Association. A copy of the *MO&O* and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**.

**Final Regulatory Flexibility Analysis**

*Third Report and Order*

101. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in Appendix D of the *Second R&O and Further Notice* in this proceeding. The Commission sought written public comment on the proposals in that *Further Notice*, including comment on the IRFA. As described below, no commenter raised an issue concerning the IRFA. The Commission's Final Regulatory Flexibility Analysis in this *Third R&O* conforms to the RFA.

**I. Need for and Purpose of this Action**

102. In the *Second R&O*, the Commission adopted coverage requirements for and decided to allow partitioning by non-nationwide geographic area licensees, including small businesses. In the *Further Notice*, the Commission sought comment on whether to adopt coverage requirements for nationwide geographic area licenses, whether to allow partitioning by nationwide geographic area licensees, whether to permit disaggregation of paging licenses, and whether to revise the application procedures for shared channels. In the *Third R&O*, the Commission concludes that it is best to defer any decision on coverage requirements for nationwide geographic area licenses until similar issues raised in the *Narrowband PCS Further Notice of Proposed Rulemaking* are resolved. The Commission further modifies the paging rules to permit partitioning by all nationwide geographic area licensees and to allow disaggregation by all MEA, EA, and nationwide geographic area licensees. The *Third R&O* also adopts rules governing the coverage requirements for parties to partitioning or disaggregation agreements involving MEA or EA licenses, and the license term of partitioned or disaggregated MEA, EA, and nationwide geographic area licenses. Further, the *Third R&O* permits MEA, EA, and nationwide geographic area licensees to combine partitioning and disaggregation. These partitioning and disaggregation rules will allow entities in addition to the initial geographic area licensees, including small businesses, to participate in providing paging services. Indeed, partitioning and disaggregation should be well suited to small businesses that do not wish to acquire an entire geographic area license. Finally, the *Third R&O* establishes additional mechanisms to inform consumers of the rules governing paging licenses and the danger of fraudulent schemes perpetrated by application mills. These mechanisms should help to reduce application fraud and protect consumers.

**II. Summary of Issues Raised in Response to the Initial Regulatory Flexibility Analysis**

103. None of the commenters submitted comments specifically in response to the IRFA. The Commission has, however, taken small business concerns into account in the *Third R&O*, as discussed in Sections V and VI of the FRFA.

**III. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply**

104. The rules adopted in the *Third R&O* will affect small businesses that hold or seek to acquire commercial paging licenses. These entities include small business nationwide geographic area licensees that decide to partition or disaggregate, small businesses that obtain MEA or EA licenses through auction and subsequently decide to partition or disaggregate, and small businesses that may acquire partitioned and/or disaggregated MEA, EA, or nationwide geographic area licenses. To ensure the more meaningful participation of small business entities in the auctions, the Commission adopted a two-tiered definition of small businesses in the *Second R&O*: (1) An entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $3 million; or (2) an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. In December 1998, the Small Business Association approved the two-tiered size standards for paging services set forth in the *Second R&O*.

*MEA and EA Licenses*

105. In the Final Regulatory Flexibility Analysis incorporated in Appendix C of the *Second R&O*, the Commission anticipated that approximately 16,630 non-nationwide geographic area licenses will be auctioned. No parties, however, commented in response to the *Further Notice* on the number of small businesses that might elect to use the proposed partitioning and disaggregation rules and no reasonable estimate can be made. While the Commission is unable to predict accurately how many paging licensees meeting one of the above definitions will participate in or be successful at auction, the *Third CMRS Competition Report* estimated that, as of January 1998, there were more than 600 paging companies in the United States. The *Third CMRS Competition Report* also

indicates that at least ten of the top twelve publicly held paging companies had average gross revenues in excess of $15 million for the three years preceding 1998. The Commission expects that these ten companies will participate in the paging auction and may employ the partitioning or disaggregation rules. The Commission also expects, for purposes of the evaluations and conclusions in this Final Regulatory Flexibility Analysis, that a number of paging licenses will be awarded to small businesses, and at least some of those small business licensees will likely also take advantage of the partitioning and disaggregation rules. The Commission is unable to predict accurately the number of small businesses that may choose to acquire partitioned or disaggregated MEA or EA licenses. The Commission expects, however, for purposes of the evaluations and conclusions in this Final Regulatory Flexibility Analysis, that entities meeting one of the above definitions will use partitioning and disaggregation as a means to obtain a paging license from an MEA or EA licensee at a cost lower than the cost of the license for the entire MEA or EA.

*Nationwide Geographic Area Licenses*

106. The partitioning and disaggregation rules pertaining to nationwide geographic area licenses adopted in the *Third R&O* will affect the 26 licensees holding nationwide geographic area licenses to the extent they choose to partition or disaggregate, as well as any entity that enters into a partitioning or disaggregation agreement with a nationwide geographic area licensee. No parties, however, commented on the number of small business nationwide geographic area licensees that might elect to partition or disaggregate their licenses and no reasonable estimate can be made. While the Commission is unable to state accurately how many nationwide geographic area licensees meet one of the above small business definitions, the *Third CMRS Competition Report* indicates that at least eight of the top twelve publicly held paging companies hold nationwide geographic area licenses and had average gross revenues in excess of $15 million for the three years preceding 1998. The Commission expects at least some of these eight companies to employ the partitioning or disaggregation rules, and also expects, for the purposes of evaluations and conclusions in this Final Regulatory Flexibility Analysis, that nationwide geographic area licensees meeting one of the above definitions may use the partitioning or disaggregation rules. No parties commented on the number of small businesses that may choose to acquire partitioned or disaggregated licenses from nationwide geographic area licensees and, again, no reasonable estimate can be made. While the Commission is unable to predict accurately the number of small businesses that may choose to acquire partitioned or disaggregated licenses from nationwide geographic area licensees, the Commission expects, for purposes of the evaluations and conclusions in the Final Regulatory Flexibility Analysis, that entities meeting one of the above small business definitions will use partitioning and disaggregation as a means to obtain a paging license from a nationwide geographic area licensee.

*Fraud on Shared Paging Channels*

107. The additional mechanisms established to inform consumers of the paging rules and the potential for paging application fraud on the shared channels will not affect small businesses seeking to acquire a license on a shared paging channel, except that small businesses interested in investing in shared channel licenses will be more informed of the potential for fraud.

**IV. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

108. The rules adopted in the *Third R&O* impose reporting and recordkeeping requirements on small businesses, as well as others, seeking to obtain or transfer licenses through partitioning and disaggregation. The information requirements would be used to determine whether the proposed partitionee or disaggregatee is an entity qualified to obtain a partitioned license or disaggregated spectrum. This information will be a one-time filing by any applicant requesting such a license. The information can be submitted on FCC Form 490 or Form 603 for Part 22 paging services until July 1, 1999. Part 22 applicants must file electronically in the Universal Licensing System (ULS) on Form 603 on or after July 1, 1999. The Commission estimates that the average burden on the applicant is three hours for the information necessary to complete these forms. The Commission estimates that seventy-five percent of the respondents, which may include small businesses, will contract out the burden of responding. The Commission estimates that it will take approximately 30 minutes to coordinate information with those contractors. The remaining twenty-five percent of respondents, which may include small businesses, are estimated to employ in-house staff to provide the information. Applicants filing electronically, including small businesses, will not incur any per minute on-line charge. The Commission estimates that applicants contracting out the information would use an attorney or engineer (average of $200 per hour) to prepare the information.

**V. Steps Taken to Minimize Burdens on Small Entities**

109. The rules adopted in the *Third R&O* are designed to implement Congress' goal of giving small businesses, as well as other entities, the opportunity to participate in the provision of spectrum-based services. The rules are also consistent with the Communications Act's mandate to identify and eliminate market entry barriers for entrepreneurs and small businesses in the provision and ownership of telecommunications services.

*Partitioning and Disaggregation*

110. Partitioning of nationwide geographic area licenses and disaggregation of MEA, EA, and nationwide geographic area licenses will facilitate market entry by parties that may lack the financial resources to participate in auctions, including small businesses. Partitioning and disaggregation are expected to enable small businesses to obtain licenses for areas smaller than MEA, EA, and nationwide areas, or smaller amounts of spectrum, at costs they will be able to afford. Allowing for the partitioning and disaggregation of MEA and EA licenses prior to fulfillment of construction requirements by the initial licensees will facilitate the immediate entry of new competitors, including small businesses, into the paging market. Finally, the Commission's decision to allow parties to partitioning or disaggregation agreements of MEA and EA licenses to choose between two options to meet the coverage requirements will provide small businesses with more flexibility in managing their resources.

*Fraud on Shared Paging Channels*

111. As stated above, the additional mechanisms established to deter paging application fraud on the shared channels are not expected to have an impact on any small business or other entity applying for a paging license on a shared channel. The changes are intended to protect consumers from application fraud. Small businesses interested in investing in shared channel licenses, however, will be more informed of the potential for fraud.

**VI. Significant Alternatives Considered**

112. The Commission considered and rejected the following alternative proposals concerning partitioning, disaggregation, coverage requirements for parties to partitioning and disaggregation agreements, and license terms.

*Partitioning*

113. The Commission declined to adopt Paging Network, Inc.'s (PageNet) proposal that partitioning should be allowed only after the initial geographic area licensee has met the build-out requirements for the entire geographic area, and that partitioning before a geographic area licensee meets its construction requirements should be allowed only on a waiver basis where good cause is shown. PageNet's concern was that the ability to partition may encourage bidders in the auction to engage in unlawful contact with other bidders, particularly if the market is highly contested, and that geographic area licensees may seek to avoid the cancellation of their licenses by partitioning to a ''straw man'' when they fail to meet the Commission's coverage requirements. The Commission found, however, that there was no evidence that ''sham'' arrangements between geographic area licensees and other parties to avoid construction requirements are likely to occur in the paging service or have already taken place in other services. The Commission also determined that any unlawful activity between bidders concerning partitioning falls within its anti-collusion rules. Finally, allowing parties to partition spectrum immediately after license grant will facilitate the entry of new competitors to the paging market, many of whom will be small businesses seeking to acquire a smaller service area or smaller amount of paging spectrum at a reduced cost.

*Disaggregation*

114. A number of petitioners opposed the Commission's proposal to allow MEA, EA, and nationwide geographic area licensees to disaggregate, contending that disaggregation of paging spectrum is neither technically nor practically feasible. Small Business in Telecommunications (SBT) proposes that disaggregation should be limited only to small businesses during the original licensee's construction period. In considering and rejecting the petitioners' arguments, the Commission concluded that the market should determine whether it is technically or economically feasible to disaggregate spectrum. The Commission further concluded that all qualified parties should be eligible to disaggregate any geographic area license because open eligibility to disaggregate spectrum promotes prompt service to the public by facilitating the assignment of spectrum to the entity that values it most. The Commission found that allowing spectrum disaggregation at this time could potentially expedite the introduction of service to underserved areas, provide increased flexibility to licensees, and encourage participation by small businesses in the provision of services.

*Coverage Requirements*

115. The Commission declined to adopt Metrocall, Inc.'s proposal that geographic area licensees' coverage benchmarks should be based on the entire geographic area, including the partitioned area, to prevent the geographic area licensee from using partitioning to circumvent coverage requirements. As stated previously, the Commission found that there was no evidence that ''sham'' arrangements between geographic area licensees and other parties to avoid construction requirements are likely to occur in the paging service or have already taken place in other services. The Commission also declined to adopt PCIA's proposal that the partitioner should be responsible for build-out in the partitioned area if the partitionee fails to build out, and that the entire license should be cancelled if build-out in the partitioned area is not completed by either the partitionee or the partitioner. The decision not to place the ultimate responsibility for the partitionee's coverage requirements on the partitioner, as well as the decision to provide parties to partitioning agreements with two options for meeting the coverage requirements, is expected to encourage more partitioning agreements, including agreements involving small businesses. The resulting benefits will be the same for disaggregation arrangements.

116. Finally, the Commission declined to adopt commenters' proposal to eliminate the ''substantial service'' option as it applies to coverage requirements in the partitioning and disaggregation context. The Commission found that maintaining the ''substantial service'' option will encourage licensees to build out their systems while safeguarding the financial investments made by those licensees who are financially unable to meet specific population coverage requirements. Thus, the Commission found that the substantial service alternative will promote service growth while helping licensees to remain financially viable and retain their licenses. Retaining the ''substantial service'' option will also allow small businesses flexibility in meeting their coverage requirements.

*License Term*

117. The Commission declines to adopt SBT's proposal that when an area is partitioned within one year of the renewal date of the original ten-year license term, the partitionee should receive the license for a one-year term. The Commission found that adopting this proposal would result in the partitioner conferring greater rights than it was awarded under the original terms of its license grant.

**VII. Report to Congress**

118. The Commission shall send a copy of the *Third R&O*, including this Final Regulatory Flexibility Analysis, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the *Third R&O*, including this Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Association. A copy of the *Third R&O* and Final Regulatory Flexibility Analysis (or summaries thereof) will also be published in the **Federal Register**.

**Ordering Clauses**

119. Authority for issuance of this *Memorandum Opinion and Order on Reconsideration and Third Report and Order* is contained in Sections 4(i), 303(r), 309(j), 332, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 309(j), 332, and 405.

120. Accordingly, *it is ordered* that the petitions for reconsideration or clarification listed in Appendix A *are granted* to the extent provided herein and otherwise *are denied;* and that the Petition for Partial Reconsideration of PSWF Corporation filed April 11, 1997, is to the extent provided herein *dismissed* as moot. This action is taken pursuant to Sections 4(i), 303(r), 309(j), 332, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 309(j), 332, and 405, and Section 1.429(i) of the Commission's rules, 47 CFR 1.429(i).

121. *It is further ordered* that the petitions for reconsideration and application for review of the *CWD Order* listed in footnote 51 *are denied*. This action is taken pursuant to Sections 4(i), 303(r), 309(j), 332, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 309(j), 332, and 405, and Sections

1.429(i) and 1.115 of the Commission's rules, 47 CFR 1.429(i), 1.115.

122. *It is further ordered* that the Commission's rules are amended as set forth in Appendix B. *It is further ordered* that the provisions of this *Memorandum Opinion and Order on Reconsideration and Third Report and Order* and the Commission's rules, as amended in Appendix B, *shall become effective* 60 days after publication of this *Memorandum Opinion and Order on Reconsideration and Third Report and Order* in the **Federal Register**.

123. *It is further ordered* that a Public Notice will be issued by the Wireless Telecommunications Bureau following the adoption of this *Memorandum Opinion and Order on Reconsideration and Third Report and Order* that will remove the interim licensing rules on the shared PCP channels from the Commission's rules.

124. *it is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this *Memorandum Opinion and Order on Reconsideration and Third Report and Order,* including the Supplemental Final Regulatory Flexibility Analysis and Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects**

*47 CFR Part 22*

Public mobile services.

*47 CFR Part 90*

Private land mobile radio services.

**Rule Changes**

For the reasons stated in the preamble, parts 22 and 90 of title 47 of the Code of Federal Regulations is amended as follows:

## PART 22—PUBLIC MOBILE SERVICES

1. The authority citation for Part 22 continues to read as follows:

**Authority:** Sections 4, 303, 309 and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 309 and 332, unless otherwise noted.

2. Section 22.213 is added to read as follows:

**§ 22.213 Long-form application (FCC Form 601).**

Each successful bidder for a paging geographic area authorization must submit a ''long-form'' application (Form 601) within ten (10) business days after being notified by Public Notice that it is the winning bidder. Applications for paging geographic area authorizations on FCC Form 601 must be submitted in accordance with § 1.2107 and § 1.2112 of this chapter, all applicable procedures set forth in the rules in this part, and any applicable Public Notices that the FCC may issue in connection with an auction. After an auction, the FCC will not accept long-form applications for paging geographic area authorizations from anyone other than the auction winners and parties seeking partitioned authorizations pursuant to agreements with auction winners under § 22.221 of this part.

3. Section 22.215 is amended by revising paragraph (a) to read as follows:

**§ 22.215 Authorization, grant, denial, default, and disqualification.**

(a) Each winning bidder will be required to pay the full balance of its winning bid no later than ten (10) business days following the release date of a Public Notice establishing the payment deadline. If a winning bidder fails to pay the balance of its winning bids in a lump sum by the applicable deadline as specified by the Commission, it will be allowed to make payment no later than ten (10) business days after the payment deadline, provided that it also pays a late fee equal to five (5) percent of the amount due. When a winning bidder fails to pay the balance of its winning bid by the late payment deadline, it is considered to be in default on its authorization(s) and subject to the applicable default payments. Authorizations will be awarded upon the full and timely payment of winning bids and any applicable late fees.

* * * * *

4. Section 22.217 is amended by revising paragraph (a) and adding paragraph (b)(4) to read as follows:

**§ 22.217 Bidding credits for small businesses.**

(a) A winning bidder that qualifies as a small business or a consortium of small businesses as defined in § 22.223(b)(1)(i) of this part may use a bidding credit of thirty-five (35) percent to lower the cost of its winning bid. A winning bidder that qualifies as a small business or a consortium of small businesses as defined in § 22.223(b)(1)(ii) of this part may use a bidding credit of twenty-five (25) percent to lower the cost of its winning bid.

(b) * * *

(4) If a small business that utilizes a bidding credit under this section partitions its authorization or disaggregates its spectrum to an entity not meeting the eligibility standards for the same bidding credit, the partitioning or disaggregating licensee will be subject to the provisions concerning unjust enrichment as set forth in § 1.2111(e) (2) and (3) of this chapter.

**§ 22.219 [Removed]**

5. Section 22.219 is removed.

6. Section 22.221 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 22.221 Eligibility for partitioned licenses.**

* * * * *

(b) Each party to an agreement to partition the authorization must file a long-form application (FCC Form 601) for its respective, mutually agreed-upon geographic area together with the application for the remainder of the MEA or EA filed by the auction winner.

(c) If the partitioned authorization is being applied for as a partial assignment of the MEA or EA authorization following grant of the initial authorization, request for authorization for partial assignment of an authorization shall be made pursuant to § 1.948 of this part.

7. Section 22.223 is amended by revising paragraphs (b)(1)(i), (b)(1)(ii) and (b)(2) and adding paragraphs (b)(4) and (e) to read as follows:

**§ 22.223 Definitions concerning competitive bidding process.**

* * * * *

(b) * * *

(1) * * *

(i) Together with its affiliates and controlling interests has average gross revenues that are not more than $3 million for the preceding three years; or

(ii) Together with its affiliates and controlling interests has average gross revenues that are not more than $15 million for the preceding three years.

(2) For purposes of determining whether an entity meets either the $3 million or $15 million average annual gross revenues size standard set forth in paragraph (b)(1) of this section, the gross revenues of the entity, its affiliates, and controlling interests shall be considered on a cumulative basis and aggregated.

(3) * * *

(4) Applicants without identifiable controlling interests. Where an applicant (or licensee) cannot identify controlling interests under the standards set forth in this section, the gross revenues of all interest holders in the applicant, and their affiliates, will be attributable.

* * * * *

(e) *Controlling interest.* (1) For purposes of this section, controlling interest includes individuals or entities with *de jure* and *de facto* control of the applicant. *De jure* control is greater than 50 percent of the voting stock of a corporation, or in the case of a

partnership, the general partner. *De facto* control is determined on a case-by-case basis. An entity must disclose its equity interest and demonstrate at least the following indicia of control to establish that it retains *de facto* control of the applicant:

(i) The entity constitutes or appoints more than 50 percent of the board of directors or management committee;

(ii) The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and

(iii) The entity plays an integral role in management decisions.

(2) *Calculation of certain interests.* (i) Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised.

(ii) Partnership and other ownership interests and any stock interest equity, or outstanding stock, or outstanding voting stock shall be attributed as specified below.

(iii) Stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and, to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal, or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust.

(iv) Non-voting stock shall be attributed as an interest in the issuing entity.

(v) Limited partnership interests shall be attributed to limited partners and shall be calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses.

(vi) Officers and directors of an entity shall be considered to have an attributable interest in the entity. The officers and directors of an entity that controls a licensee or applicant shall be considered to have an attributable interest in the licensee or applicant.

(vii) Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

(viii) Any person who manages the operations of an applicant or licensee pursuant to a management agreement shall be considered to have an attributable interest in such applicant or licensee if such person or its affiliate pursuant to paragraph (d) of this section has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence,

(A) The nature or types of services offered by such an applicant or licensee;

(B) The terms upon which such services are offered; or

(C) The prices charged for such services.

(ix) Any licensee or its affiliate who enters into a joint marketing arrangement with an applicant or licensee, or its affiliate, shall be considered to have an attributable interest, if such applicant or licensee, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence,

(A) The nature or types of services offered by such an applicant or licensee;

(B) The terms upon which such services are offered; or

(C) The prices charged for such services.

8. Section 22.225 is amended by revising paragraphs (a)(1), (b)(1) and (e) to read as follows:

**§ 22.225 Certifications, disclosures, records maintenance and audits.**

(a) * * *

(1) The identity of the applicant's controlling interests and affiliates, and, if a consortium of small businesses, the members of the joint venture; and

* * * * *

(b) * * *

(1) Disclose separately and in the aggregate the gross revenues, computed in accordance with § 22.223, for each of the following: the applicant, the applicant's affiliates, the applicant's controlling interests, and, if a consortium of small businesses, the members of the joint venture;

* * * * *

(e) *Definitions.* The terms affiliate, small business, consortium of small businesses, gross revenues, and controlling interest used in this section are defined in § 22.223.

9. Section 22.503 is amended by revising paragraphs (b)(2), (b)(3), (h), (i), and (k)(1) and (k)(2) to read as follows:

**§ 22.503 Paging geographic area authorizations.**

* * * * *

(b) * * *

(2) Major Economic Areas (MEAs) and Economic Areas (EAs) are defined below. EAs are defined by the Department of Commerce, Bureau of Economic Analysis. *See* Final Redefinition of the MEA Economic Areas, 60 FR 13114 (March 10, 1995). MEAs are based on EAs. In addition to the Department of Commerce's 172 EAs, the FCC shall separately license Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, and American Samoa, which have been assigned FCC-created EA numbers 173–175, respectively, and MEA numbers 49–51, respectively.

(3) The 51 MEAs are composed of one or more EAs as defined in the following table:

| MEAs | EAs |
|---|---|
| 1 (Boston) | 1–3. |
| 2 (New York City) | 4–7, 10. |
| 3 (Buffalo) | 8. |
| 4 (Philadelphia) | 11–12. |
| 5 (Washington) | 13–14. |
| 6 (Richmond) | 15–17, 20. |
| 7 (Charlotte-Greensboro-Greenville-Raleigh) | 18–19, 21–26, 41–42, 46. |
| 8 (Atlanta) | 27–28, 37–40, 43. |
| 9 (Jacksonville) | 29, 35. |
| 10 (Tampa-St. Petersburg-Orlando) | 30, 33–34. |
| 11 (Miami) | 31–32. |
| 12 (Pittsburgh) | 9, 52–53. |
| 13 (Cincinnati-Dayton) | 48–50. |
| 14 (Columbus) | 51. |

| MEAs | EAs |
|---|---|
| 15 (Cleveland) | 54–55. |
| 16 (Detroit) | 56–58, 61–62. |
| 17 (Milwaukee) | 59–60, 63, 104–105, 108. |
| 18 (Chicago) | 64–66, 68, 97, 101. |
| 19 (Indianapolis) | 67. |
| 20 (Minneapolis-St. Paul) | 106–107, 109–114, 116. |
| 21 (Des Moines-Quad Cities) | 100, 102–103, 117. |
| 22 (Knoxville) | 44–45. |
| 23 (Louisville-Lexington-Evansville) | 47, 69–70, 72. |
| 24 (Birmingham) | 36, 74, 78–79. |
| 25 (Nashville) | 71. |
| 26 (Memphis-Jackson) | 73, 75–77. |
| 27 (New Orleans-Baton Rouge) | 80–85. |
| 28 (Little Rock) | 90–92, 95. |
| 29 (Kansas City) | 93, 99, 123. |
| 30 (St. Louis) | 94, 96, 98. |
| 31 (Houston) | 86–87, 131. |
| 32 (Dallas-Fort Worth) | 88–89, 127–130, 135, 137–138. |
| 33 (Denver) | 115, 140–143. |
| 34 (Omaha) | 118–121. |
| 35 (Wichita) | 122. |
| 36 (Tulsa) | 124. |
| 37 (Oklahoma City) | 125–126. |
| 38 (San Antonio) | 132–134. |
| 39 (El Paso-Albuquerque) | 136, 139, 155–157. |
| 40 (Phoenix) | 154, 158–159. |
| 41 (Spokane-Billings) | 144–147, 168. |
| 42 (Salt Lake City) | 148–150, 152. |
| 43 (San Francisco-Oakland-San Jose) | 151, 162–165. |
| 44 (Los Angeles-San Diego) | 153, 160–161. |
| 45 (Portland) | 166–167. |
| 46 (Seattle) | 169–170. |
| 47 (Alaska) | 171. |
| 48 (Hawaii) | 172. |
| 49 (Guam and the Northern Mariana Islands) | 173. |
| 50 (Puerto Rico and U.S. Virgin Islands) | 174. |
| 51 (American Samoa) | 175. |

* * * * *

(h) *Adjacent geographic area coordination required.* Before constructing a facility for which the interfering contour (as defined in § 22.537 or § 22.567 of this part, as appropriate for the channel involved) would extend into another paging geographic area, a paging geographic area licensee must obtain the consent of the relevant co-channel paging geographic area licensee, if any, into whose area the interfering contour would extend. Licensees are expected to cooperate fully and in good faith attempt to resolve potential interference problems before bringing matters to the FCC. In the event that there is no co-channel paging geographic area licensee from whom to obtain consent in the area into which the interfering contour would extend, the facility may be constructed and operated subject to the condition that, at such time as the FCC issues a paging geographic area authorization for that adjacent geographic area, either consent must be obtained or the facility modified or eliminated such that the interfering contour no longer extends into the adjacent geographic area.

(i) *Protection of existing service.* All facilities constructed and operated pursuant to a paging geographic area authorization must provide co-channel interference protection in accordance with § 22.537 or § 22.567, as appropriate for the channel involved, to all authorized co-channel facilities of exclusive licensees within the paging geographic area. Non-exclusive licensees on the thirty-five exclusive 929 MHz channels are not entitled to exclusive status, and will continue to operate under the sharing arrangements established with the exclusive licensees and other non-exclusive licensees that were in effect prior to February 19, 1997. MEA, EA, and nationwide geographic area licensees have the right to share with non-exclusive licensees on the thirty-five exclusive 929 MHz channels on a non-interfering basis.

* * * * *

(k) *Coverage requirements.* Failure by an MEA or EA licensee to meet either the coverage requirements in paragraphs (k)(1) and (k)(2) of this section, or alternatively, the substantial service requirement in paragraph (k)(3) of this section, will result in automatic termination of authorizations for those facilities that were not authorized, constructed, and operating at the time the geographic area authorization was granted. MEA and EA licensees have the burden of showing when their facilities were authorized, constructed, and operating, and should retain necessary records of these sites until coverage requirements are fulfilled. For the purpose of this paragraph, to ''cover'' area means to include geographic area within the composite of the service contour(s) determined by the methods of §§ 22.537 or 22.567 as appropriate for the particular channel involved. Licensees may determine the population of geographic areas included within their service contours using either the 1990 census or the 2000 census, but not both.

(1) No later than three years after the initial grant of an MEA or EA geographic area authorization, the licensee must construct or otherwise acquire and operate sufficient facilities to cover one third of the population in the paging geographic area. The licensee

must notify the FCC at the end of the three-year period pursuant to § 1.946 of this chapter, either that it has satisfied this requirement or that it plans to satisfy the alternative requirement to provide substantial service in accordance with paragraph (k)(3) of this section.

(2) No later than five years after the initial grant of an MEA or EA geographic area authorization, the licensee must construct or otherwise acquire and operate sufficient facilities to cover two thirds of the population in the paging geographic area. The licensee must notify the FCC at the end of the five year period pursuant to § 1.946 of this chapter, either that it has satisfied this requirement or that it has satisfied the alternative requirement to provide substantial service in accordance with paragraph (k)(3) of this section.

* * * * *

10. Section 22.507 is amended by revising paragraph (c) to read as follows:

**§ 22.507 Number of transmitters per station.**

* * * * *

(c) *Consolidation of separate stations.* The FCC may consolidate site-specific contiguous authorizations upon request (FCC Form 601) of the licensee, if appropriate under paragraph (a) of this section. Paging licensees may include remote, stand-alone transmitters under the single system-wide authorization, if the remote, stand-alone transmitter is linked to the system via a control/repeater facility or by satellite. Including a remote, stand-alone transmitter in a system-wide authorization does not alter the limitations provided under § 22.503(f) on entities other than the paging geographic area licensee. In the alternative, paging licensees may maintain separate site-specific authorizations for stand-alone or remote transmitters. The earliest expiration date of the authorizations that make up the single system-wide authorization will determine the expiration date for the system-wide authorization. Licensees must file timely renewal applications for site-specific authorizations included in a single system-wide authorization request until the request is approved. Renewal of the system-wide authorization will be subject to § 1.949 of this chapter.

**§ 22.509 [Amended]**

11. Paragraph (c) of § 22.509 is removed.

12. Section 22.513 is added to read as follows:

**§ 22.513 Partitioning and disaggregation.**

MEA and EA licensees may apply to partition their authorized geographic service area or disaggregate their authorized spectrum at any time following grant of their geographic area authorizations. Nationwide geographic area licensees may apply to partition their authorized geographic service area or disaggregate their authorized spectrum at any time as of August 23, 1999.

(a) *Application required.* Parties seeking approval for partitioning and/or disaggregation shall apply for partial assignment of a license pursuant to § 1.948 of this chapter.

(b) *Partitioning.* In the case of partitioning, requests for authorization for partial assignment of a license must include, as attachments, a description of the partitioned service area and a calculation of the population of the partitioned service area and the authorized geographic service area. The partitioned service area shall be defined by 120 sets of geographic coordinates at points at every 3 degrees azimuth from a point within the partitioned service area along the partitioned service area boundary unless either an FCC-recognized service area is used (*e.g.*, MEA or EA) or county lines are followed. The geographical coordinates must be specified in degrees, minutes, and seconds to the nearest second latitude and longitude, and must be based upon the 1983 North American Datum (NAD83). In the case where FCC-recognized service areas or county lines are used, applicants need only list the specific area(s) through use of FCC designations or county names that constitute the partitioned area.

(c) *Disaggregation.* Spectrum may be disaggregated in any amount.

(d) *Combined partitioning and disaggregation.* Licensees may apply for partial assignment of authorizations that propose combinations of partitioning and disaggregation.

(e) *License term.* The license term for a partitioned license area and for disaggregated spectrum shall be the remainder of the original licensee's license term as provided for in § 1.955 of this chapter.

(f) *Coverage requirements for partitioning.* (1) Parties to a partitioning agreement must satisfy at least one of the following requirements:

(i) The partitionee must satisfy the applicable coverage requirements set forth in § 22.503(k)(1), (2) and (3) for the partitioned license area; or

(ii) The original licensee must meet the coverage requirements set forth in § 22.503(k)(1), (2) and (3) for the entire geographic area. In this case, the partitionee must meet only the requirements for renewal of its authorization for the partitioned license area.

(2) Parties seeking authority to partition must submit with their partial assignment application a certification signed by both parties stating which of the above options they select.

(3) Partitionees must submit supporting documents showing compliance with their coverage requirements as set forth in § 22.503(k)(1), (2) and (3).

(4) Failure by any partitionee to meet its coverage requirements will result in automatic cancellation of the partitioned authorization without further Commission action.

(g) *Coverage requirements for disaggregation.*

(1) Parties to a disaggregation agreement must satisfy at least one of the following requirements:

(i) Either the disaggregator or disaggregatee must satisfy the coverage requirements set forth in § 22.503 (k)(1), (2) and (3) for the entire license area; or

(ii) Parties must agree to share responsibility for meeting the coverage requirements set forth in § 22.503 (k)(1), (2) and (3) for the entire license area.

(2) Parties seeking authority to disaggregate must submit with their partial assignment application a certification signed by both parties stating which of the above requirements they meet.

(3) Disaggregatees must submit supporting documents showing compliance with their coverage requirements as set forth in § 22.503 (k)(1), (2) and (3).

(4) Parties that accept responsibility for meeting the coverage requirements and later fail to do so will be subject to automatic license cancellation without further Commission action.

13. Section 22.531 is amended by revising paragraph (f) to read as follows:

**§ 22.531 Channels for paging operation.**

* * * * *

(f) For the purpose of issuing paging geographic authorizations, the paging geographic areas used for UHF channels are the MEAs, and the paging geographic areas used for the low and high VHF channels are the EAs (see § 22.503(b)).

## PART 90—PRIVATE LAND MOBILE RADIO SERVICES

14. Section 90.175 is amended by revising paragraph (f) to read as follows:

**§ 90.175 Frequency coordination requirements.**

* * * * *

(f) For frequencies in the 929–930 MHz band listed in paragraph (b) of § 90.494: A statement is required from the coordinator recommending the most appropriate frequency.

* * * * *

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 99–15329 Filed 6–23–99; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

**[CC Docket Nos. 96–45 and 97–21; FCC 99–49]**

### Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, we clarify certain portions of the Commission's funding priority rules for the schools and libraries universal service support mechanism to remove any ambiguity that may exist in the application of such rules. In this document, we also reconsider, on our own motion, the Commission's rule that prohibits the disbursement of funds during the pendency of an appeal of a decision issued by the Administrator.

**DATES:** June 24, 1999.

**FOR FURTHER INFORMATION CONTACT:** Sharon Webber, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's document released on May 28, 1999. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 Twelfth Street, S.W., Washington, D.C., 20554.

#### I. Introduction

1. In this Order, we clarify certain portions of the Commission's funding priority rules for the schools and libraries universal service support mechanism to remove any ambiguity that may exist in the application of such rules. Specifically, we clarify that, when a filing window is in effect, and demand exceeds total authorized support, the Administrator of the universal service support mechanisms (the Universal Service Administrative Company or USAC), shall allocate funds for discounts to schools and libraries for internal connections beginning with those applicants at the highest discount level, i.e., ninety percent, and to the extent funds remain, continue to allocate funds for discounts to applicants at each descending single discount percentage.

2. In this Order, we also reconsider, on our own motion, the Commission's rule that prohibits the disbursement of funds during the pendency of an appeal of a decision issued by the Administrator. We find that, if the appeal relates to a request for additional support by the applicant or involves a challenge by a third party to only a portion of the approved support, and the application is not otherwise the subject of an appeal, the Administrator may disburse, during the pendency of the appeal, those funds that have been approved by the Administrator.

#### II. Rules of Funding Priority

3. In the *Fifth Reconsideration Order*, 63 FR 43088 (August 12, 1998), the Commission adopted new rules of funding priority that would apply when a filing window is in effect and demand exceeds total authorized support. In establishing these rules of priority, the Commission sought to ensure that funds are directed to the most economically disadvantaged schools and libraries and that every eligible school and library that filed within the window would receive some assistance. Consistent with these goals, the rules of priority provide that requests for telecommunications services and Internet access for all discount categories shall receive first priority for the available funding (priority one services). The remaining funds are allocated to requests for support for internal connections, beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries discount matrix, i.e., schools and libraries eligible for a ninety percent discount. To the extent funds remain, the rules provide that the Administrator shall allocate funds to the requests for support for internal connections submitted by schools and libraries eligible for an eighty percent discount, then for a seventy percent discount, and shall continue committing funds for internal connections in the same manner to the applicants at each descending discount level until there are no funds remaining. The rules further provide that, if the remaining funds are not sufficient to support all funding requests within a particular discount level, the Administrator shall allocate the total amount of remaining support on a pro rata basis to that particular discount level.

4. Although the Commission's rules prioritize funding requests on the basis of broad discount categories, e.g., ninety percent or eighty percent, the Commission's rules also specifically recognize that not all discounts calculated under the schools and libraries support mechanism will fall within these broad discount categories. In the *Fourth Reconsideration Order*, 63 FR 2093 (January 13, 1998), the Commission revised the rules regarding how to calculate the appropriate discount level when schools and libraries aggregate their demand with others to create a consortium. The Commission determined, *inter alia*, that, for services that are shared by two or more schools, libraries, or consortia members, i.e., ''shared services,'' the discount level should be calculated by averaging the applicable discounts of all member schools and libraries. As a result, the discount levels for ''shared service'' requests, which typically are internal connection requests, are single discount level percentages, e.g., eighty-nine percent, eighty-eight percent, and so on.

5. While the Commission's funding priority rules do not specifically address the single discount percentage levels associated with ''shared service'' requests, the rules on ''shared services'' and the funding priority rules must be read in concert. We clarify, therefore, that, when sufficient funds are not available to fund all internal connection requests, the Administrator shall allocate funds for discounts to schools and libraries beginning with those applicants at the ninety percent discount level and, to the extent funds remain, continue to allocate funds for discounts to applicants at each descending single discount percentage, e.g., eighty-nine percent, eighty-eight percent, and so on. We believe that this method of allocating funds is consistent with the Commission's goal of ensuring that support for internal connections is directed first toward the most economically disadvantaged schools. We also note that allocating funds at each descending discount level will enable the Administrator to distribute funds sooner than it could if it were required to determine the pro rata amount for the entire discount category before distributing support. We add a Note to section 54.507(g)(1)(iii) to reflect the clarification made in this Order. We also clarify that, to the extent sufficient funds do not exist to fund all requests within a single discount percentage, the Administrator shall allocate the

remaining support on a pro rata basis over that single discount percentage level, as provided in section 54.505(g)(1)(iv) of the Commission's rules.

**III. Disbursement of Funding During Pendency of a Request for Review of an Administrator Decision**

6. The Commission's rules provide that, during the pendency of a request for review of a decision by the Administrator, a service provider shall not be reimbursed for the provision of discounted services under the schools and libraries or rural health care support mechanisms, or receive support under the high cost and low income support mechanism, until a final decision has been issued either by the Administrator or by the Commission. In adopting this rule, we reasoned that withholding support during the pendency of an appeal would reduce the likelihood that support is disbursed in error. We did not intend, however, to require that funds be withheld where an applicant claims on appeal that it was eligible for more support than that which was approved by the Administrator or where a third party challenges only a portion of the support approved by the Administrator. In such a case, assuming the application is not otherwise the subject of an appeal, there is no reason to withhold the disbursement of those funds that the Administrator has approved. Moreover, we believe that withholding funds under such circumstances might also have the unintended result of discouraging applicants from filing legitimate appeals. Such a result would undermine one function of our appeal procedures, which is to help ensure that the universal service support mechanisms are operating consistent with Commission rules and policies. Accordingly, we find that, where a pending appeal involves a request for additional support or a third party challenge to only a portion of the approved support, and the application is not otherwise the subject of an appeal, the Administrator may disburse, during the pendency of that appeal, the unchallenged portion of the approved support. Accordingly, section 54.725 of the Commission's rules is revised.

**IV. Effective Date of Rules**

7. In this Order, we revise section 54.725 of the Commission's rules to provide that, where an applicant seeks review of a decision of the Administrator on the grounds that the applicant was eligible for additional support or a third party challenges only a portion of the approved support, and the application is not otherwise the subject of an appeal, the Administrator may disburse the funds that it has approved. Some applicants already have filed appeals seeking additional support, but, under our current rules, they are unable to receive the support that the Administrator has approved. Receipt of support is particularly crucial with regard to internal connections in light of the Commission's requirement that applicants complete implementation of their internal connections by a date certain for this funding year. To ensure that the disbursement of support to these applicants is not further delayed, this revised rule must take effect upon publication in the **Federal Register**. We therefore find good cause to depart in the manner described above from the general requirement of 5 U.S.C. 553(d) that final rules take effect not less than thirty (30) days after their publication in the **Federal Register**. Accordingly, section 54.725 of the Commission's rules, as revised below, shall become effective upon release of this Order.

**VI. Regulatory Flexibility Analysis**

*A. Supplemental Final Regulatory Flexibility Analysis*

8. In compliance with the Regulatory Flexibility Act (RFA), this Supplemental Final Regulatory Flexibility Analysis (SFRFA) supplements the Final Regulatory Flexibility Analysis (FRFA) included in the *Universal Service Order*, 62 FR 32862 (June 17, 1997), and the Supplemental Final Regulatory Flexibility Analyses in the *Fifth Reconsideration Order* and the *Eighth Order on Reconsideration*, 63 FR 70564 (December 21, 1998), only to the extent that changes to the Order adopted here on reconsideration require changes in the conclusions reached in the FRFA in the *Universal Service Order* and the Supplemental Final Regulatory Flexibility Analyses in the *Fifth Reconsideration Order* and *Eighth Order on Reconsideration*. This FRFA was preceded by an Initial Regulatory Flexibility Analysis (IRFA) incorporated in the Notice of Proposed Rulemaking and Order Establishing the Joint Board (NPRM), prepared in connection with the Recommended Decision, which sought written public comment on the proposals in the NPRM and the Recommended Decision.

9. To the extent that any statement contained in this Supplemental Final Regulatory Flexibility Analysis is perceived as creating ambiguity with respect to our rules or statements made in sections of this Order, the rules and statements set forth in those sections shall be controlling.

1. Need for and Objectives of This Report and Order

10. The Commission is required by section 254 of the Act to promulgate rules to implement promptly the universal service provisions of section 254. On May 8, 1997, the Commission adopted rules intended, *inter alia*, to reform our system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. In this Order, we clarify one aspect of those rules and reconsider another aspect of those rules. First, we clarify that, when a filing window is in effect, and demand exceeds total authorized support, the Administrator shall allocate funds for discounts to schools and libraries for internal connections beginning with those applicants at the highest discount level, i.e., ninety percent, and to the extent funds remain, continue to allocate funds for discounts to applicants at each descending single discount percentage. Second, we find that, if an appeal of a decision by the Administrator relates to a request for additional support by the applicant or involves a challenge by a third party to only a portion of the approved support, and the application is not otherwise the subject of an appeal, the Administrator may disburse, during the pendency of the appeal, those funds that have been approved by the Administrator.

2. Summary and Analysis of the Significant Issues Raised by Public Comments in Response to the IRFA

11. In this Order, the Commission clarifies certain portions of the Commission's funding priority rules for the schools and libraries universal service support mechanism to remove any ambiguity that may exist in the application of such rules. In doing so, the Commission affirms similar guidance that was provided by the Common Carrier Bureau to the Schools and Libraries Division of USAC. In this Order, the Commission also reconsiders, on its own motion, the rule that prohibits the disbursement of funds during the pendency of an appeal from a decision of the Administrator. The Order modifies the rule to provide that, where a pending appeal involves a request for additional support or a third party challenge to only a portion of the approved support, and the application is not otherwise the subject of an appeal, the Administrator may disburse, during the pendency of that appeal, the funds that it has approved.

3. Description and Estimates of the Number of Small Entities to Which the Rules Adopted in This Order Will Apply

12. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

13. As noted in the FRFA at paragraphs 890–925 of the *Universal Service Order,* there are a number of small entities that would be affected by the new universal service rules. The rules adopted in this Order, however, would affect primarily schools and libraries. Moreover, because the rules would allow schools and libraries to benefit more fully from the schools and libraries universal service support mechanism, would not have a significant impact on these small entities. We further describe and estimate, however, the number of small governmental jurisdictions, small businesses, and small organizations that may potentially be affected by the rules adopted in this Order.

14. The Commission specifically noted in the *Universal Service Order* that the SBA defined small elementary and secondary schools and small libraries as those with under $5 million in annual revenues. The Commission further estimated that there are fewer than 86,221 public and 26,093 private schools and fewer than 15,904 libraries that may be affected by the decisions and rules adopted in the Universal Service Order. We believe that these same small entities may be affected potentially by the rules adopted in this Order.

15. In addition, the Commission noted in the *Universal Service Order* that neither the Commission nor the SBA has developed a definition of small, rural health care providers. Section 254(h)(5)(B) defines the term ''health care provider'' and sets forth the seven categories of health care providers eligible to receive universal service support. We estimated that there are fewer than 12,296 health care providers potentially affected by the rules in the *Universal Service Order.* We note that these small entities may potentially be affected by the rules adopted in this Order.

4. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements.

Both the clarification and modification to the Commission's rules that are set forth in this Order relate only to actions that need to be taken by the Administrator of the universal service support mechanisms. As a result, we do not anticipate any additional burdens or costs associated with these proposed rules on any entities, including on small entities.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.

16. In the FRFA to the *Universal Service Order,* the Commission described the steps taken to minimize the significant economic impact on a substantial number of small entities consistent with stated objectives associated with the Schools and Libraries section, the Rural Health Care Provider section, and the Administration section of the *Universal Service Order.* As described, our current action to amend our rules will benefit schools, libraries, and rural health care providers, by ensuring that funds are allocated first to the neediest schools and libraries and that schools, libraries, and rural health care providers will be able to receive any support approved by the Administrator that is not the subject of an appeal. We believe that these amended rules fulfill the statutory mandate to enhance access to telecommunications services for schools, libraries, and rural health care providers, and fulfill the statutory principle of providing quality services at ''just, reasonable, and affordable rates,'' without imposing unnecessary burdens on schools, libraries, rural health care providers, or service providers, including small entities.

17. *Report to Congress.* The Commission will send a copy of the Fifth Order on Reconsideration in CC Docket No. 97–21 and Eleventh Order on Reconsideration in CC Docket No. 96–45 including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Fifth Order on Reconsideration in CC Docket No. 97–21 and Eleventh Order on Reconsideration in CC Docket No. 96–45 including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Fifth Order on Reconsideration in CC Docket No. 97–21 and Eleventh Order on Reconsideration in CC Docket No. 96–45 and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

**VII. Ordering Clauses**

18. Accordingly, it is ordered that, pursuant to the authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), 403 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 218–220, 254, 303(r), 403 and 405, section 553 of the Administrative Procedure Act, 5 U.S.C. 553, and 47 CFR 1.108, the Fifth Order on Reconsideration in CC Docket No. 97–21 and Eleventh Order on Reconsideration in CC Docket No. 96–45 are adopted.

19. It is furthered ordered that, pursuant to the authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), 403 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 218–220, 254, 303(r), 403 and 405, section 553 of the Administrative Procedure Act, 5 U.S.C. 553, and 47 CFR 1.108, Part 54 of the Commission's rules, is amended.

20. It is further ordered that, if the Administrator determines that sufficient funds are available to provide support for all priority one service appeals that may be granted for the first funding year, the Administrator may allocate support immediately to such appeals.

21. It is furthered ordered that, to the extent funds remain after the Administrator has allocated support to all priority one services, and the Administrator has determined that sufficient funds are available to allocate

support to all internal connection appeals down to the seventy percent discount level, the Administrator may allocate support immediately to such internal connection appeals that may be granted.

22. It is furthered ordered that, because the Commission has found good cause, this Order and 47 CFR 54.725, as amended, is effective June 24, 1999.

23. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Fifth Order on Reconsideration in CC Docket No. 97–21 and Eleventh Order on Reconsideration in CC Docket No. 96–45, including the Supplemental Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 54**

Healthcare providers, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

**Rule Changes**

Part 54 of Title 47 of the Code of Federal Regulations is amended to read as follows:

## Part 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

**Authority:** 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

2. Add a Note to paragraph (g)(1)(iii) to read as follows:

**§ 54.507 Cap.**

* * * * *

(g) * * *

**Note to paragraph (g)(l)(iii):** To the extent that there are single discount percentage levels associated with ''shared services'' under § 54.505(b)(4), the Administrator shall allocate funds for internal connections beginning at the ninety percent discount level, then for the eighty-nine percent discount, then for the eighty-eight percent discount, and shall continue committing funds for internal connections in the same manner to the applicants at each descending discount level until there are no funds remaining.

* * * * *

3. Revise § 54.725 to read as follows:

**§ 54.725 Universal service disbursements during pendency of a request for review and Administrator decision.**

(a) When a party has sought review of an Administrator decision under § 54.719(a) through (c) in connection with the schools and libraries support mechanism or the rural health care support mechanism, the Administrator shall not reimburse a service provider for the provision of discounted services until a final decision has been issued either by the Administrator or by the Federal Communications Commission; provided, however, that the Administrator may disburse funds for any amount of support that is not the subject of an appeal.

(b) When a party has sought review of an Administrator decision under § 54.719(a) through (c) in connection with the high cost and low income support mechanisms, the Administrator shall not disburse support to a service provider until a final decision has been issued either by the Administrator or by the Federal Communications Commission; provided, however, that the Administrator may disburse funds for any amount of support that is not the subject of an appeal.

[FR Doc. 99–16181 Filed 6–23–99; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 76

**[CS Docket No. 95–178; FCC 99–116]**

### Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission dismisses petitions for reconsideration of the *First Report and Order* filed by Blackstar of Ann Arbor, Inc., licensee of WBSX–TV and by Costa de Oro Television, Inc., licensee of KSTV, that ask for special treatment for certain kinds of situations during the transition from ADIs to DMAs. The Commission has found that special relief is not warranted for these stations as they have taken advantage of the market modification process. Also addressed are possible ways to ease the transition for both broadcasters and cable operators, and the viewers they serve, as the Commission moves from an ADI to a DMA-based market structure. The Commission has set forth several procedural and evidentiary mechanisms to ameliorate the impact the change in market definitions may have on cable operators and broadcasters. The principal goal of the measures taken is to reduce, to the maximum extent feasible, cable subscriber confusion, and disruption in viewing patterns, that may arise because of the change. The Commission also improves the functioning of the *ad hoc* market modification process mandated by the Communications Act. New rules have been implemented encapsulizing the evidence necessary for filing market modification petitions.

**DATES:** These rules are effective July 26, 1999. Public comments on the modified information collection requirements are due on or before July 14, 1999.

**ADDRESSES:** A copy of any comments on the modified information collection requirements should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Ben Golant, Consumer Protection and Competition Division, Cable Services Bureau, at (202) 418–7111. For additional information concerning the information collection contained herein, contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Order on Reconsideration and Second Report and Order, CS Docket No. 95–178, FCC 99–116 adopted May 21, 1999 and released May 26, 1999. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th St. SW, Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 445 12th St. SW, Washington, DC 20554.

**Synopsis of the Order on Reconsideration and Second Report and Order**

1. The *First Report and Order and Further Notice of Proposed Rulemaking* (''*First Order*''), 61 FR 29312, in this proceeding established new television market definitions for purposes of the cable television signal carriage and retransmission consent rules. The Commission concluded that it was appropriate to change market definitions from Arbitron areas of dominant influence (''ADIs'') to Nielsen Media Research designated market areas (''DMAs'') for must-carry/retransmission consent elections. That action was necessary because the Arbitron market definition mechanism previously relied on was no longer available. However, the Commission continued to use

Arbitron's 1991–1992 *Television ADI Market Guide* designations for the 1996–1999 must-carry/retransmission consent election period and postponed the switch to DMAs until the third must-carry/retransmission consent cycle that is to commence on January 1, 2000.

2. The *First Order* delayed the transition to DMAs because of concerns related to the transition from one market definition to another and the relationship of such a transition to the *ad hoc* market boundary change process provided for in Section 614(h) of the Communications Act. For this reason, the *Further Notice of Proposed Rulemaking* was issued to solicit additional information and provide parties an opportunity to further consider issues relating to the transition to market designations based on DMAs. It also sought comment on procedures for refining the Section 614(h) market modification process.

3. Our task in this *Order on Reconsideration and Second Report and Order* is twofold. First, we consider the arguments raised in petitions for reconsideration of the *First Report and Order* filed by Blackstar of Ann Arbor, Inc., licensee of WBSX–TV (ch. 31—Ann Arbor, MI) (''WBSX–TV''), and by Costa de Oro Television, Inc., licensee of KSTV (ch. 57—Ventura, CA) (''KSTV–TV''), that ask for special treatment for certain kinds of situations during the transition from ADIs to DMAs. For the reasons discussed below, we conclude that no special treatment for these petitioners is warranted.

4. Second, we address the issues raised in the *Further Notice,* and by the comments filed in response to that *Notice,* regarding possible ways to ease the transition for both broadcasters and cable operators, and the viewers they serve, as we move from an ADI to a DMA-based market structure. We also take this opportunity to improve the functioning of the *ad hoc* market modification process mandated by Section 614(h) of the Communications Act. Our principal goal is to reduce, to the extent feasible, cable subscriber confusion and disruption in viewing patterns that may arise because of the switch from ADIs to DMAs. Another goal is to clarify the procedures for determining markets for must carry purposes so that the administration of Section 614 by the Commission is efficient and workable.

5. Under provisions added to the Act by the Cable Television Consumer Protection and Competition Act of 1992 (''1992 Cable Act''), local commercial broadcast television stations may elect whether they will be carried by local cable television systems, and open video systems, under the mandatory carriage (''must-carry'') or retransmission consent rules. A station electing must carry rights is entitled to insist on cable carriage in its local market. Should a local station choose retransmission consent, it and the cable system negotiate the terms of a carriage agreement and the station is permitted to receive compensation in return for carriage. Stations are required to make this election once every three years. The current cycle commenced on January 1, 1997, with elections having been made by October 1, 1996.

6. For the purposes of these carriage rights, a station is considered local on all cable systems located in the same television market as the station. As enacted, Section 614(h)(1)(C) of the Act specifies that a station's market shall be determined in the manner provided in section 73.3555(d)(3)(i) of the Commission's rules, in effect on May 1, 1991. Section 73.3555(d)(3)(i), now redesignated as section 73.3555(e)(2)(i), is a separate rule concerned with broadcast station ownership issues that refers to Arbitron's ADIs. An ADI is a geographic market designation that defines each television market based on measured viewing patterns. Essentially, each county or portion of a county in the contiguous areas of the United States is allocated to a discrete market based on which home-market stations receive a preponderance of total viewing hours in the county. For the purposes of this calculation, both over-the-air and cable television viewing are included. Because of the topography involved, certain counties are divided into more than one sampling unit. Also, in certain circumstances, a station may have its home county assigned to an ADI even though it receives less than a preponderance of the audience in that county.

7. Moreover, under the ''home county rule,'' the county in which the station's community of license is located is considered within its market. Under Arbitron, a station's city of license, and its home county, may be located in one ADI but assigned by Arbitron to another ADI for ratings reporting purposes. The station may assert its must carry rights, or elect retransmission consent, against cable operators in its home county and all of the cable operators in the ADI to which the station is assigned.

8. In addition to ADIs that generally define the area in which a station is entitled to insist on carriage, Section 614(h) of the Act directs the Commission to consider individual requests for changes through a market modification process, including the determination that particular communities may be part of more than one television market. The Act provides that the Commission may ''With respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section.''

9. Section 614(h)(1)(C)(ii) states that in deciding requests for market modifications, the Commission shall consider several factors: (I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community; (II) whether the television station provides coverage or other local service to such community; (III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interests to the community; and (IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community. Section 76.59 of the rules provides that broadcast stations and cable operators shall submit requests for market modifications in accordance with the procedures for filing petitions for special relief.

10. Arbitron discontinued its television ratings and research business after the Commission established the mechanism for determining a station's local market for purposes of the triennial must carry/retransmission consent election. Thus, future editions of the publications referred to in the rules are no longer available and new procedures for defining market areas for must carry purposes had to be established.

11. Historically, Arbitron and Nielsen have been the primary national television ratings services. Conceptually, their market designations—ADIs and DMAs—are the same. They both use audience survey information from cable and noncable households to determine the assignment of counties to local television markets based on the market whose stations receive the largest share of viewing in the county. The differences in their assignments of specific counties to particular markets reflect a number of factors, including slightly different methodologies and criteria as well as normal sampling and statistical variations. Each company also has a policy for determining what constitutes a separate market based on a complex

statistical formula. For example, Arbitron considers some areas, such as Hagerstown, Maryland, or Sarasota, Florida, as separate markets, compared to Nielsen, which includes Hagerstown in the Washington, DC. DMA and Sarasota in the Tampa DMA. In addition, these services reserve the right to take into account other considerations. Nielsen, in particular, ''reserves the right not to create a DMA if there is a lack of sufficient financial support of Nielsen Service in that potential DMA.''

12. Nielsen has established a system to determine which stations are considered ''local'' for ratings reporting purposes. This is the ''Market-Of-Origin'' assignment process and involves several statistical calculations based upon viewership and other factors. However, a station may petition Nielsen to change its Market-Of-Origin assignment if both its transmitter and the majority of its Grade B service contour are located in a different DMA than the DMA in which the station's community of license is located. Such a petition must include relevant information on which the petitioning station bases its request for a change in Market-Of-Origin including, but not limited to, community of license, present transmitter location, signal coverage (including FCC coverage maps), audience data from previous measurements, and/or competitive considerations. Nielsen reserves the right to use its best judgment based upon the information available to it in considering whether the change sought by the petition reflects the reality of the market affected. The station's assignment is then made available in Nielsen's *Directory of Stations* publication. Thus, it appears that the home county rule applies in the DMA context as it had in the ADI context.

13. In the *First Order*, the Commission concluded that Nielsen's DMA market assignments provide the most accurate method for determining the areas serviced by local stations, recognizing that over time the 1992–92 ADI market list, if relied upon, would become outdated. Moreover, we continued to believe that our 1993 decision to use updated market designations for each election cycle to account for changing markets was appropriate. Nielsen currently provides the only generally recognized source of information on television markets that would permit us to retain this policy. Thus, we concluded that Nielsen's DMA market designations will provide the best method of ''delineat[ing] television markets based on viewing patterns'' in the future.

14. We observed, however, that a shift to a DMA-based market definition standard could result in some stations currently on local cable systems being replaced, some other programming services (i.e., cable networks) being dropped to accommodate situations where the number of stations entitled to carriage increases, and some channel line-ups needing to be reconfigured to accommodate the channel positioning requests of stations with new must-carry rights. The Commission also voiced concern about the impact the change to DMAs would have on the Section 614(h) market modification decisions already in force. The consensus of commenters was that prior market modification decisions should remain in effect. It was unclear, however, whether cable operators could face conflicting obligations or be subject to carriage of signals from multiple markets based on a revised market standard when these modifications are considered in conjunction with a new market definition. We did not receive any information regarding the effect that such decisions, in conjunction with a change to a DMA standard, would have on the must-carry obligations of cable operators. In addition, we were unable to determine the burden on the Commission to remedy conflicts that might result from an immediate switch to DMAs. The complexity of such situations and the administrative burden on the Commission and others to resolve possible conflicts could, the Commission believed, disrupt the orderly provision of local television service to subscribers.

15. Based on these considerations, the Commission postponed the switch in market designation until the next must-carry/retransmission consent takes effect on January 1, 2000, to ensure that potential transitional problems could be addressed. We reasoned that the phased-in approach would assist parties who expressed concerns that a switch in market definitions would result in administrative burdens and costs for cable operators, including small cable operators, and would impede the entry of new market entrants, such as local exchange carriers planning to operate cable systems under Title VI or the OVS provisions. Thus, the Commission decided to continue to use the 1991–1992 ADI market list for the 1996 election and to establish a framework that uses updated DMA markets lists for the 1999 and subsequent elections.

16. Two parties, Blackstar of Ann Arbor, Inc., licensee of WBSX–TV (channel 31, Ann Arbor, Michigan) (''WBSX–TV'') and Costa de Oro Television, Inc., licensee of KSTV (channel 57, Ventura, California) (''KSTV–TV'') filed petitions for reconsideration of the First Order generally arguing that the Commission did not adequately consider updated market information, unique to their situations, when considering the transition from ADIs to DMAs.

17. We believe there is no reason to make special exceptions for these two stations. The individual circumstances that apply to WBSX–TV and KSTV–TV are most appropriately dealt with through the market modification process, which takes into consideration their future DMA assignments. Both stations have used the market modification process to seek significant expansion of their ADI markets for must carry purposes. WBSX–TV has already added 55 communities to its current ADI, and KSTV–TV has added 22 communities. The Commission has specifically indicated that information regarding DMAs could be useful in resolving individual ad hoc market modification requests filed pursuant to Section 614(h). The stations may therefore use the modification process to change their DMAs, in the future, if the situation so warrants.

18. The *Further Notice of Proposed Rulemaking* sought comment on mechanisms for facilitating the transition from a market definition system based on ADIs to one based on DMAs. Commenters were asked to consider whether special provisions should be made for particular types of systems (e.g., systems with fewer than a specified number of subscribers) to minimize the disruptions that could occur due to a switch to DMAs. The Commission is also concerned about the potential impact on consumers who are cable subscribers.

19. We are not making the change suggested by Southern. Its concern about non-network territorial exclusivity arrangements appears to be misplaced and are better left addressed in Gen. Docket No. 87–24, which focuses on the network rules of concern to Southern. The change from ADIs to DMAs for must carry purposes in section 76.55 affects neither of the market listings referenced in Section 73.658(m) for purposes of territorial exclusivity in non-network arrangements. Section 73.658(m) provides that exclusivity may be secured in hyphenated markets included in the top 100 markets listed in section 76.51 or, if the market in question is not in the top 100 list, then Section 73.658(m) makes reference to the ARB Television Market Analysis. Even though Arbitron's television market analysis is no longer published,

there has been no change in the reference, and the Nielsen DMA list has not been substituted theretofore. Because section 73.568(m) refers to section 76.51, the reference to DMAs in section 76.55 is not relevant to territorial exclusivity in non-network arrangements, and Southern's objection to the switch to DMAs on this basis is unwarranted.

20. We agree with those commenters that continue to express concern about the potentially disruptive consequences of switching to DMAs. A comparison of the ADI markets currently used with the DMA markets that will be used after the current election cycle is over, reveals that 135 counties change markets because of the switch from ADIs to DMAs. A sampling of these counties suggests that, in certain instances, the changes will have serious impact, even though a relatively small number of cable systems and broadcasters would be involved. And, though a strong case could be made for reversing the market shift based on the *ad hoc* market evaluation factors contained in Section 614(h), this statutory mechanism, in and of itself, may not significantly lessen the impact of the change. Thus, we believe that some general relief is warranted. We note that the change in market definition from ADI to DMA will take effect on January 1, 2000, which prompts us to consider on our own motion whether this timing would create a Year 2000 (''Y2K'') problem, particularly for the cable systems that will experience carriage or channel line-up changes. Commission staff has confirmed with relevant industry representatives that cable systems' headend signal processing equipment is not dependent on date or time, and, therefore, the market definition change would not raise Y2K considerations.

21. A cable system currently within a particular station's ADI, but outside that station's DMA, may want to continue carrying that station after the transition to DMAs because the station serves the local interests of its subscribers. We believe that when the cable system wants to carry a particular station, it is a strong indication that the community it serves continues to be within the station's local market notwithstanding the change in market definition. Therefore, to minimize programming disruptions, we adopt a policy whereby a cable system within a television station's ADI (but outside its DMA) that currently carries the station on its channel line-up may continue to carry the station, without being subject to copyright liability, even after the transition to DMAs. We note that the Act's one-third channel capacity cap, and related closest network affiliate provision, apply in this particular situation. This policy adheres to the Commission's goals of providing cable subscribers with television programming that serves the interests of localism, while also reducing the possibility of channel line-up disruptions and subsequent subscriber confusion. Our approach also takes into account the Commission's need for current market information that only Nielsen can provide while, at the same time, ensuring that cable subscribers are not deprived of valued broadcast services. In these cases, the commercial television station is, and will continue to be, local with respect to this cable system, in conformance with section 76.55 of the Commission's rules. This policy applies to stations that elected retransmission consent or must carry.

22. As stated earlier, one of the principal goals in this proceeding is to reduce channel line-up disruptions whenever possible. The rule changes we are adopting, which permit individual fact-specific Commission adjustments prior to the shift to DMAs, seek to accomplish that goal. The new rules, amending sections 76.55(e) and 76.59, will include the following features:

—In the absence of any mandatory carriage complaint or market modification petition, cable operators in communities that change from one market to another will be permitted to treat their systems as either in the new market, or with respect to the specific stations carried prior to the market change, as in both markets.

—If any dispute is triggered by a change in markets that results in the filing of a mandatory carriage complaint, any affected party may respond to that complaint by filing a market modification request. The market modification request and the carriage complaint will then be addressed simultaneously. All broadcast signal carriage issues, such as channel positioning matters, would be addressed in the same proceeding. Pending complaints and petitions will be disposed of in a single proceeding whenever practicable.

23. We also find that where a broadcast station is dissatisfied with a final market modification decision issued by the Commission, and then successfully petitions Nielsen to change its market-of-origin in response to the Commission's adverse decision, the Commission's market modification decision remains controlling.

24. In Section 614(h) market modification cases, where issues are raised as to which market the cable communities are properly associated, the Commission will pay particular attention to the following considerations:

—Where persuasive evidence exists showing that two markets have been merged into a single market because there was insufficient financial support from purchasers of the rating report available from the rating service to maintain separate markets, or for other reasons unrelated to market definitions relevant to the purposes of the Commission's broadcast signal carriage rules, it will be presumed, in the absence of a demonstration to the contrary, that the previous demarcation points between the markets should be maintained. A failure of financial support for the ratings service shall not be regarded as indicative of a market change for purposes of the rules. Such evidence, as letters to the station from Nielsen explaining the change, would fulfill the burden of proof in this context.

—Where a county is shifted into a noncontiguous market (*e.g.*, a county in State A is considered part of a DMA in State B, which is not geographically contiguous with the county in State A), in considering whether that shift should be followed or revised through the Section 614(h) process, localism as reflected in over-the-air audience ratings, will be given particular attention. That is, because over-the-air audience data is a more accurate and reliable indication of local viewership, greater evidentiary weight will be given to over-the-air audience data than to cable audience data. Careful attention will be given to unique market situations, like those in the Rocky Mountain area, where counties are sometimes hundreds of miles away from the core of the market. In considering a requested market modification, the Commission will closely examine whether the challenged market redesignation resulted from audience change due to cable carriage of the signals in question as opposed to resulting from changes in the local market.

—Where Nielsen's market redesignation is the result of potentially transitory programming popularity shifts on particular stations rather than from significant changes in the facilities or locations of such stations, the Commission may, upon request, resurrect the former market structure. Thus, for example, if a county were shifted to market A because the stations in that market garnered a 52% share of the audience and

deleted from market B because its stations garnered only a 48% share, the Commission would consider leaving the market unchanged because stability is in the public interest and the underlying structure of the market has not been significantly altered to warrant the difficulties associated with the change.

—We will also consider factors such as changes in the time zone from the old market to the new market, as well as significant disruptions to subscribers. Evidence of significant disruptions to subscribers could include extensive changes in channel line-ups and subscriber objections to the change.

—Where a cable operator or broadcaster seeks to remain associated with a smaller market rather than be shifted to a larger market, the Commission will give weight to this consideration in a market modification proceeding. Supporting the smaller market is consistent with the Section 614(h) policy of paying ''particular attention to the value of localism.'' In general, small cable system and small broadcast station concerns will be given careful attention. In this regard, the Commission will review whether such a change supports the policy of localism. In this situation, we will also take into consideration broadcasters' costs to deliver signals to cable system headends in the market and the costs to cable systems to receive local market stations.

—Separate from the specifics of the market modification process, the four statutory criteria, and other evidence considered in that process, the Commission will consider whether extreme hardship is imposed on small cable systems or small broadcast stations, often those unaffiliated with the top networks, by the DMA conversion process. Such hardship would include disproportionate expense to the system and programming disruption to subscribers that is exacerbated by the small size of the system. Evidence of such hardship would include reliable cost estimates for carrying the new stations and channel position conflicts between old and new stations. We believe this hardship scheme will address the concerns raised by small cable operators in their comments, and are more closely aligned with the Act's localism tenets than the small operators' opt out and reimbursement proposals discussed.

25. We noted concern about the effect of changing to a DMA market definition on previous Section 614(h) decisions and petitions pending before the Commission. Specifically, we requested commenting parties to address the consequences of a shift in definitions on the more particularized market boundary redefinition process contained in Section 614(h), the decisions that have been made under that section, and the proceedings under it that would result from shifting market definitions.

26. We conclude that market modification requests filed prior to the effective date of the change from ADI to DMA, including petitions, petitions for reconsideration, and applications for review, will be processed under Arbitron's ADI market definitions. We do not believe that the petitions for reconsideration and applications for review currently pending will be affected by the conversion to DMAs because, in most of these cases, the market assignment will not change. In cases in which the conversion to DMAs will have a direct consequence, we will take the future DMA assignment into account, as we have done since the *First Order* was released. We will also leave intact final market modification cases that have not been appealed and/or cases that have been subject to final Commission review so as to avoid disturbing settled expectations.

27. In addition, we agree with NCTA's argument that where the Commission has previously decided to delete a community from a station's ADI market, that deletion will remain in effect after the conversion to DMAs. We also recognize NCTA's concern that stations should not be able to assert carriage rights in its former market while a market modification deletion request is pending. Generally, a cable operator may not delete a commercial television station from carriage during the pendency of a market modification proceeding. However, if conversion to DMAs moves a station out of the ADI that is the subject of a pending deletion request, the deletion request is effectively moot, and the cable operator may drop the station. We believe that few, if any, pending proceedings will fall within this factual pattern. Nevertheless, we agree with NCTA that, as we stated earlier, the Act and our rules cannot be read to allow a television station to claim carriage rights in more than one DMA, barring a modification by the Commission.

28. We also sought comment on what changes in the modification process may be warranted given that administrative resources available to process Section 614(h) requests are limited and the Act established a 120-day time period for action on these petitions. We stated that new techniques may be needed to increase the efficiency of the decision making process. Under the existing process, a party is free to make its case using whatever evidence it deems appropriate. One suggested means of expediting the modification process was to establish more focused and standardized evidentiary specifications. Therefore, we proposed to establish specific evidentiary requirements in order to support market modification petitions under Section 614(h) of the Act. We requested comment on the following specific information submission requirements and sought alternatives that would assist the Commission in its review of individual requests. In particular, we proposed that each filing include exhibits showing:

—A map detailing the relevant community locations and geographic features, disclosing station transmitter sites, cable system headend locations, terrain features that would affect station reception, and transportation and other local factors influencing the shape of the economic market involved. Relevant mileage would be clearly disclosed;

—Historical cable carriage, illustrated by the submission of documents, such as rate cards, listing the cable system's channel line-ups for a period of several years.

—Coverage provided by the stations, including maps of the areas in question with the universe of involved broadcast station contours and cable system franchise areas clearly delineated with the same level of specificity as the maps filed with the Commission for broadcast licensing proceedings;

—Information regarding coverage of news or other programming of interest to the community as demonstrated by program logs or other descriptions of local program offerings, such as detailed listings of the programming provided in a typical week that address issues of importance in the community in question and not the market in general;

—Other information that demonstrates a nexus between the station and the cable community, including data on transportation, shopping, and labor patterns;

—Published audience data for the relevant stations showing their average all day audience (i.e., the reported audience averaged over Sunday–Saturday, 7 a.m.–1 a.m., or an equivalent time period) for both cable and noncable households over a period of several years.

29. We will adopt the standardized evidence approach with regard to market modification petitions and amend the rules accordingly. Petitions that do not provide the evidence required by the rule will be dismissed without prejudice. This option has distinct advantages. First, it promotes administrative efficiency. Commission staff would no longer have to spend time tracking down the appropriate maps, ratings data, and carriage records that are missing from the record. Nor would Commission staff need to contact the relevant party to request the information that should have been included in the filing in the first place. With the relevant evidence available, the resources needed to process modification requests would be reduced. It now takes almost the entire 120-day statutory period to research, draft, adopt, and release a market modification decision. The interests of both broadcasters and cable operators will be advanced by a standardized evidentiary approach that will facilitate the decision-making process. By adopting the standardized evidence option, we may be able to bring greater uniformity and certainty to the process and avoid unnecessary reconsideration petitions and appeals, which will enable us to redirect administrative resources that would have been devoted to those proceedings.

30. In addition to the evidence delineated above, we encourage petitioners to provide a more specific technical coverage showing, through the submission of service coverage prediction maps that take terrain into account, particularly maps using the Longley-Rice prediction methodology. In situations involving mountainous terrain or other unusual geographical feature, the Commission will consider Longley-Rice propagation studies in determining whether or not a television station actually provides local service to a community under factor two of the market modification test. We will view such studies as probative evidence in our analysis and a proper tool to augment Grade B contour showings. The Longley-Rice model provides a more accurate representation of a station's technical coverage area because it takes into account such factors as mountains and valleys that are not specifically reflected in a traditional Grade B contour analysis. Since both the Commission and the broadcasting industry have relied upon the Longley-Rice model in determining the digital television Table of Allocations, these studies will become increasingly useful in defining market areas for digital television stations as they come on the air.

31. We do not find merit in the argument that the standardized evidence option would pose an unreasonable financial burden on petitioners. We believe that the requested evidence should be obtainable without unreasonable difficulty and is in any case the kind of information that should be reviewed in determining whether a filing is appropriate. Most of the requested information has been included by more careful petitioners in the past without complaint about costs or administrative difficulties. Our decision here simply standardizes the type of evidence we find relevant in processing market modification petitions. However, if a requested item is in the exclusive control of the opposing party, and the opposing party refuses to provide the information, we will take into consideration which party is responsible for the absence of the requested information.

32. ALTV contends that the standardized evidence approach conflicts with the Act because Section 614(h) specifies a limited range of evidence needed to support a market modification petition. We disagree. The language of Section 614(h) provides that in considering market modification requests, ''the Commission shall afford particular attention to the value of localism by taking into account *such factors as* * * *'' (emphasis added), indicating that the factors are non-exclusive. Likewise, the legislative history accompanying Section 614(h) indicates that the four factors are non-exclusive, and we have interpreted this language to mean that the parties may submit any additional evidence they believe is appropriate. The approach we adopt today adds substance to this directive by clearly indicating what kind of evidence is necessary for a modification petition to be deemed complete. Parties may continue to submit whatever additional evidence they deem appropriate and relevant.

33. The second proposal proffered by the Commission to increase the efficiency of the decision making process was to alter to some extent the burden of producing the relevant evidence. Thus, for example, Section 614(h) establishes four statutory factors to govern the *ad hoc* market change process, including historical carriage, local service, service from other station, and audience viewing patterns. These factors are intended to provide evidence as to a particular station's market area, but they are not the only factors considered. These factors must be considered in conjunction with other relevant information to develop a result that is designed to ''better effectuate the purposes'' of the must-carry requirements. The *Notice* sought comment on whether the process could be expedited by permitting the party seeking the modification to establish a *prima facie* case based on historical carriage, technical signal coverage of the area in question, and off-air viewing. Such factors track the statutory provision and are relatively free from factual dispute. The presentation of such a *prima facie* case could then trigger an obligation on the part of any objecting entity to complete the factual record by presenting conflicting evidence as to the actual scope of the economic market involved. This could include, for example, programming information and other evidence as to the local advertising market involved. Dividing the obligations in this fashion, the *Notice* suggested, would force the party with the best access to relevant information to disclose that information at the earliest possible point in the process.

34. We find that the *prima facie* option is not the proper approach because it seems likely to create another area for procedural disputes. In contrast to the standardized evidence approach, which provides a framework that should expedite review, we are concerned that the *prima facie* approach, while possibly streamlining the process, would sacrifice the flexibility to consider all useful evidence. We also reject the market deletion plan proposed by Paxson. Under this approach, the Commission need only find that the cable system and the broadcaster share a DMA, and the cable system still has capacity for the carriage of local signals, in order to dismiss a market deletion petition. We believe this plan is contrary to the plain meaning of the Act because it ignores the four statutory factors that we must take into account when reviewing market deletion requests.

35. With regard to WRNN–TV and Paxson's request that programming should be given more weight in the modification analysis, we believe that it is inappropriate to state that one factor is universally more important than any other, as each is valuable in assessing whether a particular community should be included or excluded from a station's local market, and the relative importance of particular factors will vary depending on the circumstances in a given case. Programming is considered in the context of Section 614(h) proceedings only insofar as it serves to demonstrate the scope a station's existing market and service area, not as

a *quid pro quo* that guarantees carriage or an obligation that must be met to obtain carriage. However, we do find that such information is particularly useful in determining if the television station provides specific service to the community subject to modification. As such, we will include programming of local interest in the analysis along with mileage, Grade B contour coverage, and physical geography, when reviewing the local service element of the market modification test.

36. We continue to believe that our interpretation of Section 614(h), and the evidence we have used to analyze local service and adjust markets is reasonable and consistent with the language of the Act and statutory intent. We note that the arguments Paxson and WRNN raise were addressed at length in the *New York ADI Appeals Memorandum Opinion and Order, (''New York ADI Order''*), 12 FCC Rcd 12262 (1997), which disposed of numerous separate must carry/market modification appeals involving seven New York ADI cable operators and five television stations. The Commission's decision, subsequently affirmed by the United States Court of Appeals for the Second Circuit, *WLNY v. FCC*, 163 F.3d 187 (2d Cir. 1998), generally affirmed a staff decision to retain certain communities, and to delete other communities, from each of the stations' markets based on the four statutory factors, with particular attention paid to the local service factor as measured by Grade B contours and geographic distance, as well as other considerations. The Court's opinion fully endorsed the Commission's approach to market modifications and agreed that our careful balancing of the enumerated statutory factors, and other important considerations, are entirely consistent with the language and intent of the Act.

37. We note that Section 614(h) prohibits cable operators from deleting from carriage commercial broadcast stations during the pendency of a market modification request but does not address maintaining the status quo with respect to additions. Given the absence of a parallel statutory directive with respect to channel additions, we see no reason to depart from the general presumption that a decision is valid and binding until it is stayed or overruled. To the extent the process aids broadcast stations in both retaining and obtaining cable carriage rights, that appears to be the result intended by the statutory framework adopted.

**Market Entry Analysis**

38. Section 257 of the Act requires the Commission to complete a proceeding to identify and eliminate market entry barriers for entrepreneurs and other small businesses in the telecommunications industry. The Commission is directed to promote, *inter alia,* a diversity of media voices and vigorous economic competition. We believe that this *Order* is consistent with the objectives of Section 257 in that it promotes a smooth transition to DMAs for both cable operators and broadcasters.

**Paperwork Reduction Act**

The requirements adopted in this Report and Order have been analyzed with respect to the Paperwork Reduction Act of 1995 (the ''1995 Act'') and would impose modified information collection requirements on the public. The Commission has requested Office of Management and Budget (''OMB'') approval, under the emergency processing provisions of the 1995 Act (5 CFR 1320.13), of the modified information collection requirements contained in this Report and Order. Public comments are due on or before 20 days after date of publication of this Notice in the **Federal Register**. OMB comments are due on or before 30 days after date of publication of this Notice in the **Federal Register**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility; (b) the accuracy of the Commission's burden estimates; (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.

*OMB Approval Number:* 3060–0546.

*Title:* Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules.

*Type of Review:* Revision of existing collection.

*Respondents:* Business and for-profit entities.

*Number of Respondents:* 150.

*Estimated Time per Response:* 4–40 hours.

*Frequency of Response:* On occasion filing requirement.

*Total Estimated Annual Burden to Respondents:* 1,680 hours.

*Total Estimated Annual Cost to Respondents:* $721,500.

*Needs and Uses:* This collection (OMB 3060–0546) accounts for the paperwork burden imposed on entities when undergoing the market modification request process. Information furnished in market modification filings is used by the Commission to deem that the television market of a particular commercial television broadcast station should include additional communities within its television market or exclude communities from such station's television market.

**Final Regulatory Flexibility Act Analysis**

39. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. Section 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *First Order and Further Notice of Proposed Rulemaking,* 61 FR 29312. The Commission sought written public comments on the proposals in the *Further Notice* including comments on the IRFA. The FRFA conforms to the RFA, as amended by the Contract with America Advancement Act of 1996 (CWAAA), Pub. L. 104–121, 110 Stat. 847.

40. *Need and Purpose of this Action:* This action is necessary because the procedure for determining local television markets for signal carriage purposes relies on a market list no longer published by the Arbitron Ratings Company. Moreover, action is required to mitigate disruptions in cable channel line-ups that will be caused by the shift to a new television market paradigm.

41. *Summary of Issues Raised by the Public in Response to the Initial Regulatory Flexibility Analysis:* SCBA filed comments in response to the Initial Regulatory Flexibility Analysis. SCBA states that the Commission's objective of a smooth transition from a market definition based on ADIs to one based on DMAs can be accomplished with respect to small cable systems by creating special transition rules. SCBA has submitted small cable transition rules that allegedly will help minimize regulatory burdens on small cable systems. SCBA first proposes rules that allow qualified small cable systems to opt out of the change in market definitions for the 1999 election. According to SCBA, this will allow certain small cable systems an additional three years to prepare for the impact of market redefinition. In the alternative, SCBA suggests transition rules, detailed in paragraphs 29–30, above, that will protect existing programming and shift certain costs associated with market redefinition to the broadcasters that benefit from those costs. These comments are addressed in the Order.

42. *Description and Estimate of the Number of Small Entities Impacted.* The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction,'' and the same meaning as the term ''small business concern'' under Section 3 of the Small Business Act.'' A small concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

43. *Cable Operators.* The Communications Act at 47 U.S.C. Section 543 (m) (2) defines a small cable operator as ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 61,700,000 subscribers in the United States. We have found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. We are likewise unable to estimate the number of these small cable operators that serve 50,000 or fewer subscribers in a franchise area. We can, however, assume that the number of cable operators serving 617,000 subscribers or less that (1) are not affiliated with entities whose gross annual revenues exceed $250,000,000 or (2) serve 50,000 or fewer subscribers in a franchise area, is less than 1450.

44. SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating less than $11 million in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,323 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992.

45. *Open Video System (''OVS'').* To date the Commission has certified 23 OVS systems, at least two of which are known to be currently providing service. Little financial information is available for entities authorized to provide OVS that are not yet operational. We believe that one OVS licensee may qualify as a small business concern. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenue, we conclude that at least some of the OVS operators qualify as small entities.

46. *Television Stations.* The proposed rules and policies will apply to television broadcasting licensees, and potential licensees of television service. The Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number. There are approximately 1,589 operating full power television broadcasting stations in the nation as of April 30, 1999. Approximately 1,200 of those stations are considered small businesses.

47. In addition to owners of operating television stations, any entity who seeks or desires to obtain a television broadcast license may be affected by the rules contained in this item. The number of entities that may seek to obtain a television broadcast license is unknown.

48. *Reporting, Recordkeeping and Other Compliance Requirements.* The rules adopted in this *Order* will affect broadcast stations, cable operators, and OVS system operators, including those that are small entities. The rules adopted in this *Order* require broadcasters, cable operators, and OVS operators to provide specific forms of evidence to support market modification petitions. We do not believe that the rules adopted here today will require any specialized skills beyond those already used by broadcasters and cable operators.

49. *Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Rejected.* While declining to adopt SCBA's proposals, the Commission has implemented a procedural mechanism allowing small cable systems to file hardship petitions, if certain conditions are met. Specifically, the Commission will consider, in a case-by-case adjudicatory proceeding, whether extreme hardship would be imposed on small cable systems by requiring a transition to a new DMA market. Such hardship would include disproportionate expense to the system and programming disruption to subscribers exacerbated by the small size of the system. Evidence of such hardship would include reliable cost estimates for carrying the new stations; channel position conflicts between old and new stations; or an extensive change in channel line-ups. This mechanism should allay the concerns proffered by small cable operators.

50. *Report to Congress.* The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this *Order*, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. Section 801(a)(1)(A). A copy of this FRFA will also be published in the **Federal Register**.

**Ordering Clauses**

51. *Accordingly, it is ordered that,* pursuant to Section 4(i), 4(j), 614 and 653 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 534 and 573, and Section 301 of the Telecommunications Act of 1996, Pub. L. 104–104 (1996), part 76 *is amended* as set forth in the rule changes, effective July 26, 1999.

*It is further ordered* that the commission's Office of Public Affairs, Reference Operations Division, *Shall send* a copy of this *Final Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et. seq.* (1981).

**List of Subjects in 47 CFR Part 76**

Cable television.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

### Rule Changes

Part 76 of Title 47 of the U.S. Code of Federal Regulations is amended as follows:

## PART 76—CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.55 is amended by revising paragraphs (e)(1) through (e)(6) to read as follows:

**§ 76.55 Definitions applicable to the must-carry rules.**

* * * * *

(e) *Television market.* (1) Until January 1, 2000, a commercial broadcast television station's market, unless amended pursuant to § 76.59, shall be defined as its Area of Dominant Influence (ADI) as determined by Arbitron and published in the Arbitron 1991–1992 Television ADI Market Guide, as noted, except that for areas outside the contiguous 48 states, the market of a station shall be defined using Nielsen's Designated Market Area (DMA), where applicable, as published in the Nielsen 1991–92 DMA Market and Demographic Rank Report, and that Puerto Rico, the U.S. Virgin Islands, and Guam will each be considered a single market.

(2) Effective January 1, 2000, a commercial broadcast television station's market, unless amended pursuant to § 76.59, shall be defined as its Designated Market Area (DMA) as determined by Nielsen Media Research and published in its *DMA Market and Demographic Rank Report* or any successor publication.

(i) For the 1999 election pursuant to § 76.64(f), which becomes effective on January 1, 2000, DMA assignments specified in the 1997–98 *DMA Market and Demographic Rank Report,* available from Nielsen Media Research, 299 Park Avenue, New York, NY, shall be used.

(ii) The applicable DMA list for the 2002 election pursuant to § 76.64(f) will be the DMA assignments specified in the 2000–2001 list, and so forth for each triennial election pursuant to § 76.64(f).

(3) In addition, the county in which a station's community of license is located will be considered within its market.

(4) A cable system's television market(s) shall be the one or more ADI markets in which the communities it serves are located until January 1, 2000, and the one or more DMA markets in which the communities it serves are located thereafter.

(5) In the absence of any mandatory carriage complaint or market modification petition, cable operators in communities that shift from one market to another, due to the change in 1999–2000 from ADI to DMA, will be permitted to treat their systems as either in the new DMA market, or with respect to the specific stations carried prior to the market change from ADI to DMA, as in both the old ADI market and the new DMA market.

(6) If the change from the ADI market definition to the DMA market definition in 1999–2000 results in the filing of a mandatory carriage complaint, any affected party may respond to that complaint by filing a market modification request pursuant to § 76.59, and these two actions may be jointly decided by the Commission.

* * * * *

3. Section 76.59 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 76.59 Modification of television markets.**

* * * * *

(b) Such requests for modification of a television market shall be submitted in accordance with § 76.7, petitions for special relief, and shall include the following evidence:

(1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market.

(2) Grade B contour maps delineating the station's technical service area and showing the location of the cable system headends and communities in relation to the service areas.

**Note to paragraph (b)(2):** Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit.

(3) Available data on shopping and labor patterns in the local market.

(4) Television station programming information derived from station logs or the local edition of the television guide.

(5) Cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.

(6) Published audience data for the relevant station showing its average all day audience (i.e., the reported audience averaged over Sunday-Saturday, 7 a.m.–1 a.m., or an equivalent time period) for both cable and noncable households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.

(c) Petitions for Special Relief to modify television markets that do not include such evidence shall be dismissed without prejudice and may be refiled at a later date with the appropriate filing fee.

[FR Doc. 99–15959 Filed 6–23–99; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**RIN 1018–AD91**

## Endangered and Threatened Wildlife and Plants; Final Rule To Remove the Plant ''Echinocereus lloydii'' (Lloyd's Hedgehog Cactus) From the Federal List of Endangered and Threatened Plants

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, are removing the plant *Echinocereus lloydii* (Lloyd's hedgehog cactus), from the Federal List of Endangered and Threatened Species under the authority of the Endangered Species Act of 1973, as amended (Act). Lloyd's hedgehog cactus was listed as endangered on October 26, 1979, as a result of threats presented by collection and highway projects. Recent evidence indicates that Lloyd's hedgehog cactus is not a distinct species but rather a hybrid or cross which is not evolving independently of its parental species. Therefore, *E. lloydii* no longer qualifies for protection under the Act. Removing Lloyd's hedgehog cactus from the list constitutes our recognition of its hybrid status and removes Federal protection under the Endangered Species Act.

**DATES:** This rule is effective July 26, 1999.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service's Austin Texas Field Office, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758.

**FOR FURTHER INFORMATION CONTACT:** Kathryn Kennedy, botanist, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758, (telephone 512/490–0057; facsimile 512/490–0974).

**SUPPLEMENTARY INFORMATION:**

## Background

*Echinocereus lloydii* (Lloyd's hedgehog cactus), a member of the cactus family, was first collected by F.E. Lloyd in 1909 and was named in his honor by Britton and Rose (1922). The first plants collected by Mr. Lloyd were from near Fort Stockton, Pecos County, Texas (Weniger 1970). Lloyd's hedgehog cactus is cylindrical with one or several ribbed stems which grow up to about 20 centimeters (cm) (8 inches (in)) high and 10 cm (4 in) in diameter. The flowers vary a great deal in color from lavender to magenta, are about 5 cm (2 in) in diameter, and form mature fruits that are green tinged with pink or orange when ripe. (Correll and Johnston 1979, Poole and Riskind 1987).

Lloyd's hedgehog cactus is known from Brewster, Culberson, Pecos, and Presidio Counties, Texas, and Eddy County, New Mexico. It has also been reported from the state of Chihuahua in Mexico. Currently fewer than 15 populations are known, most occurring on private lands.

We listed Lloyd's hedgehog cactus as an endangered species on October 26, 1979 (44 FR 61916), under the authority of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et. seq.*) At the time of listing, botanists considered Lloyd's hedgehog cactus a distinct species threatened by over-collection, habitat loss or alteration due to highway construction and maintenance, and potentially by overgrazing.

The physical characteristics of specimens of Lloyd's hedgehog cactus were long recognized as intermediate between those of *Echinocereus dasyacanthus* (Texas rainbow cactus) and *Echinocerus coccineus* (a species of claret-cup cactus). Several theories emerged as to how this intermediacy may have arisen. One theory was that Lloyd's hedgehog cactus represented a primitive ancestral evolutionary lineage (ancestry), which diversified over time to give rise to two new lineages producing E. *dasyacanthus* and *E. coccineus.* A second theory was that Lloyd's hedgehog cactus was of more recent hybrid origin, the result of ancient hybridization or crossing between *E. dasyacanthus* and *E. coccineus*, but now an independent taxon or group of organisms recognizable as a species.

While reports of interspecific hybridization (cross between two species) between members of the genus *Echinocereus* were known, hybridization between *E. coccineus* and *E. dasyacanthus* seemed highly unlikely as the two species differ greatly in morphology (structure and form), have different predominant pollinators (one hummingbird pollinated, the other bee pollinated), and generally grow in different habitats; the first being a more mesic species (average moisture) and the latter being more typically found in more open desert. In addition, in sites where the plants were grown or seen in proximity to each other they were observed to bloom at different times with little if any overlap. While many hybrids are sterile, plants of *E. lloydii* are fertile and able to reproduce. In addition, because these wild populations have persisted over time, treatment as a distinct species was generally accepted.

Steve Brack (U.S. Fish and Wildlife Service 1985) reported locating *E. lloydii* only in proximity to *E. dasyacanthus* and *E. coccineus*. This apparent lack of isolation combined with the intermediate appearance of the plants raised questions about the taxonomic interpretation of *E. lloydii* as a distinct species. These taxonomic questions supported the possibility that Lloyd's hedgehog cactus might be a result of recent and sporadic hybridization events, with these wild populations simply representing relatively unstable hybrid swarms that are not evolving independently and are not recognizable as a species. In response to this new information we determined that the question of the hybrid status of Lloyd's hedgehog cactus should be further investigated.

In studies by Powell, Zimmerman, and Hilsenbeck (1991) and Powell (1995) the progeny resulting from the artificial crossing of *E. dasyacanthus* and *E. coccineus* and naturally occurring *E. lloydii* was examined using artificial cross-pollination (cross fertilization), morphological analyses (analysis of structure and form), pollen stainability studies (using slide stain techniques to assess the viability of pollen), chromosome counts, and phytochemical analysis (plant chemical). Their research demonstrated that hybrids between *E. dasyacanthus* and *E. coccineus* could be easily produced, closely resembled the naturally occurring *E. lloydii*, and were interfertile and able to backcross to the parental species. One theory resulting from this work was that if fertile hybrids were produced in the wild, they could presumably multiply and backcross to the parental species forming the sort of persistent intermediate populations of high variability which are found naturally in the wild. This suggests that Lloyd's hedgehog cactus may have arisen as a result of hybridization between these other two species of *Echinocereus*, both of which are common and not protected by the Act.

The probability that Lloyd's hedgehog cactus arose through hybridization (crossbreeding) rather than representing a persistent ancestral condition was heightened by Powell *et al.'s* (1991) finding that naturally occurring *E. lloydii* have tetraploid chromosome numbers (four times the normal chromosome numbers), as do *E. dasyacanthus* and *E. coccineus.* Tetraploid chromosome numbers are considered an advanced or recently derived characteristic in the family Cactaceae, rather than a primitive one. Zimmerman (1993) made additional observations on pollinators and other ecological and phenological (the study of periodicity in relation to climate and environment) isolating mechanisms, examined the primitive and advanced species of the *E. dasyacanthus* and *E. coccineus* taxonomic groups (rainbow cacti and claret-cup cacti) and *E. lloydii*, and performed cladistic analyses (analysis of the order of evolutionary decent). This work resulted in his agreement that Lloyd's hedgehog cactus is not primitive and probably arose as a result of hybridization.

The conclusion that plants recognized as *E. lloydii* arose through hybridization raised questions about the integrity or cohesiveness of populations and whether they were a sufficiently distinct, isolated and independently evolving genome (genetic entity) that they should be recognized as distinct species. Powell *et al.* (1991) and Powell (1995), in their phytochemical, morphological, and crossing studies detected no unique characters or reproductive isolation that would demonstrate any independent evolution had occurred. Though their study lacked comprehensive examination and interpretation of populations in the field and throughout the known range, they suggested that populations recognized as *E. lloydii* might represent mere hybrids, and should probably at best be recognized only as an illegitimate species recognized nomenclaturally (by scientific name) for purposes of identification. They designated their artificially produced hybrids as *Echinocereus* X *lloydii*.

Zimmerman (1993) examined geographical distribution, correlations with geographic variation across the range of *E. lloydii* and its parental

species, and population characteristics at several sites in the wild. He found that *E. lloydii* was only found in areas where both *E. dasyacanthus* and *E. coccineus* occur. Further, sites with plants known as *E. lloydii* were not uniform in appearance, and exhibited great variation among individuals consistent with a pattern of backcrossing or introgression with the parental species. Zimmerman could find no evidence of reproductive isolation in the field. Zimmerman found that blooming time overlapped both parental species, and hybrid individuals did not exhibit any significant habitat preference that would provide any significant separation from the parental species, concluding that *E. lloydii* is not a legitimate species. Zimmerman's review of the nomenclature resulted in the recommendation that plants formerly recognized as *E. lloydii* should properly be referred to as *Echinocereus* X *roetteri* var. *neomexicanus*.

**Previous Federal Action**

Federal action concerning Lloyd's hedgehog cactus began with Section 12 of the original Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51 was presented to Congress on January 9, 1975. A notice was published on July 1, 1975 (40 FR 27823), of our acceptance of the report of the Smithsonian Institution as a petition to list these species, including *Echinocereus lloydii,* under Section 4(c)(2), now section 4(b)(3)(A) of the Act.

The report was published in the **Federal Register** on July 1, 1975 (40 FR 27823–27924), and provided notice of our intention to review the status of the plant taxa named within. On June 16, 1976, we published a proposed rulemaking in the **Federal Register** (41 FR 24523–24572) proposing the listing of approximately 1,700 vascular plant species as endangered under Section 4 of the Act. *Echinocereus lloydii* was included in this list. In response to our proposal of June 16, 1976, four hearings were held in July and August of 1976, in the following locations: Washington, D.C.; Honolulu, Hawaii; El Segundo, California; and Kansas City, Missouri. We held a fifth public hearing on July 9, 1979, in Austin, Texas for seven Texas cacti, including *E. lloydii,* and one fish.

We published a final rule in the **Federal Register** on June 24, 1977 (42 FR 32373–32381, codified at 50 CFR 17) detailing the regulations to protect Endangered and Threatened plant species. These regulations codified the prohibitions of the Act and established procedure for the permitting of certain activities under the Act. We published a final rule to list the Lloyd's hedgehog cactus as an endangered species on October 26, 1979 (44 FR 61916).

We initiated our review of new information and the status of Lloyd's hedgehog cactus in 1994 and a draft proposed delisting rule was forwarded to the Washington Office on April 4, 1995. However, a listing moratorium (Public Law 104–6, April 10, 1995) and rescission of listing program funding in Fiscal Year 1996 disrupted our listing program. This moratorium was lifted and our listing program funding was restored on April 26, 1996. We issued guidance on May 16, 1996 (61 FR 24722), setting priorities for restarting the listing program that included processing of proposed delistings already in the Washington Office. The proposed rule for delisting Lloyd's hedgehog cactus was published on June 14, 1996 (61 FR 30209). The public comment period on the proposed rule closed August 13, 1996.

Our listing priority guidance for Fiscal Year 1997, finalized December 5, 1996 (61 FR 64475), precluded the final delisting decision and processing of this final rule. Our 1997 guidance determined that, given limited resources, enacting conservation protection for the backlog of listing actions for high priority imperiled species merited priority. Delistings and reclassifications actions were given our lowest priority.

With the publication of listing priority guidance for Fiscal Years 1998 and 1999 on May 8, 1998 (63 FR 25502), we returned to a more balanced listing program. Delisting and reclassification actions are now in the lowest priority position within Tier 2 actions. With resources allocated to all types of Tier 2 listing actions, work on the final determination for Lloyd's hedgehog cactus resumed.

In our June 14, 1996 (61 FR 30209), proposed rule, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. One hundred and fifteen letters of notification were sent to appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties requesting comment. Newspaper notices were published in the *Carlsbad Current-Argus* on June 22, 1996, The *El Paso Times* on June 25, 1996, the *Fort Stockton Pioneer* on June 27, 1996, and in the *Van Horn Advocate* on June 27 and July 4. We received five responses, all supporting delisting. One response was from the U.S. Forest Service, three were from botanists familiar with Lloyd's hedgehog cactus and one was from the president of a landowner's group. One response included a scientific paper published in 1995 after the proposed rule had been drafted and transmitted to Washington, which was not previously reviewed. This paper is cited in this final rule, and is a slight extension of earlier work supporting the hybrid nature of Lloyd's hedgehog cactus.

During the public comment period we invited peer review of the conclusions and supporting information from four qualified systematic botanists. In response we received two responses, both concurring that Lloyd's hedgehog cactus is not a distinct species.

**Summary of Factors Affecting the Species**

After a thorough review and consideration of all information available, we have determined that Lloyd's hedgehog cactus should be removed from the List of Threatened and Endangered Plants. Procedures found at section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations implementing the delisting provisions of the Act (50 CFR Part 424) were followed. The regulations at 50 CFR 424.11(d) state that a species may be delisted if (1) it becomes extinct, (2) it recovers, or (3) the original classification data were in error.

Since the time of listing, additional study has shown that Lloyd's hedgehog cactus is not a distinct species but a hybrid. After a review of the species' taxonomy, we conclude, based on the best scientific and commercial information available, that the original listing decision was based on a taxonomic interpretation subsequently demonstrated to be incorrect. Lloyd's hedgehog cactus no longer qualifies for protection under the Act because it does not conform with the definition of species.

A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). At the time of listing it was believed that Lloyd's hedgehog cactus was a distinct species and that several of these factors were relevant to its status. These factors and their application to *Echinocereus lloydii* Britt. & Rose (Lloyd's hedgehog cactus) were discussed in detail in the final rule (44 FR 61916) and included:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The

primary concern in our prior rulemaking was that Lloyd's hedgehog cactus was vulnerable from past and potential habitat destruction due to highway construction and maintenance, and the potential destructive impacts of overgrazing in the rural rangeland habitat.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* At the time of the final rule and continuing today, *Echinocereus lloydii* is in world-wide demand by collectors of rare cacti. Removal of plants from the wild has resulted in the depletion of natural populations.

C. *Disease or predation.* At the time of listing it was felt that *Echinocereus lloydii,* particularly young plants, could suffer possible adverse affects from trampling by grazing cattle. The final rule reported that light grazing did not seem to affect the species, however, intensified grazing could threaten the continued existence of *E. lloydii.*

D. *The inadequacy of existing regulatory mechanisms.* At the time *Echinocereus lloydii* was listed, the states of Texas and New Mexico had no laws protecting endangered and threatened plants. Since the listing, both states have enacted protective laws and regulations for plants. Lloyd's hedgehog cactus is on the New Mexico State List of Plant Species (9–10–10 NMSA 1978; NMFRCD Rule No. 91–1) and on the Texas List of Endangered, Threatened, or Protected Plants (Chapter 88, Texas Parks and Wildlife Code).

On July 1, 1975, Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) was amended to include all members of the family Cactaceae. CITES is an international treaty established to prevent international trade that may be detrimental to the survival of plants and animals. A CITES export permit must be issued by the exporting country before an Appendix II species may be shipped. CITES permits may not be issued if the export will be detrimental to the survival of the species or if the specimens were not legally acquired. However, CITES does not regulate take or domestic trade.

E. *Other natural or manmade factors affecting its continued existence.* The final rule contained some discussion of the low numbers of populations and the resulting restricted gene pool as a factor that could intensify the adverse effects of other threats.

The determination that Lloyd's hedgehog cactus should be delisted is based upon evidence that it is a hybrid that does not qualify for protection under the Act, rather than on the control of threats. Since Lloyd's hedgehog cactus is a hybrid which continues to be produced by the two parent species, the number of *E. lloydii* populations is no longer significant.

We have carefully assessed the best scientific and commercial information available regarding the conclusion that *Echinocereus lloydii* is a hybrid that does not qualify for protection under the Act in determining to make this rule final. Based on this evaluation, the preferred action is to remove Lloyd's hedgehog cactus from the list of Endangered and Threatened Plants.

In accordance with 5 U.S.C. 553(d), we have determined that this rule relieves an existing restriction and good cause exists to make this rule effective immediately. Delay in implementation of this delisting would cost government agencies staff time and monies on conducting Section 7 consultation on actions which may affect the Lloyd's hedgehog cactus, when this hybrid should no longer come under the protection of the Act. Lifting the existing restrictions associated with the listing of this species will enable Federal agencies to minimize any delays in project planning and implementation for actions that may affect Lloyd's hedgehog cactus.

## Effects of the Final Rule

This action removes Lloyd's hedgehog cactus from the List of Endangered and Threatened Plants. The Act and its implementing regulations set forth a series of general prohibitions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, currently apply to Lloyd's hedgehog cactus. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. These prohibitions will no longer apply to Lloyd's hedgehog cactus.

The requirements of Section 7 of the Act will also no longer apply to Lloyd's hedgehog cactus and Federal agencies will no longer be required to consult on their actions that may affect Lloyd's hedgehog cactus.

The 1988 amendments to the Act require that all species which have been delisted due to recovery be monitored for at least 5 years following delisting. Lloyd's hedgehog cactus is being delisted because the taxonomic interpretation that it is a valid species has been found to be incorrect, and Lloyd's hedgehog cactus is an unstable hybrid rather than a distinct taxon. Therefore no monitoring period following delisting is required.

Some protection for Lloyd's hedgehog cactus will remain in place. All native cacti, including hybrids, are on Appendix II of CITES. CITES regulates international trade of cacti, but does not regulate trade within the United States or prevent habitat destruction.

## National Environmental Policy Act

We have determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the basis for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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### Authors

The primary author of this document is Kathryn Kennedy, Austin Ecological Services Field Office (refer to **ADDRESSES** section).

### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

### Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended, as set forth below:

## PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

### § 17.12 [Amended]

2. Section 17.12(h) is amended by removing the entry for ''*Echinocereus lloydii*'' under ''FLOWERING PLANTS'' from the List of Endangered and Threatened Plants.

Dated: May 13, 1999.

**Jamie Rappaport Clark,**

*Director, Fish and Wildlife Service.*

[FR Doc. 99–16029 Filed 6–23–99; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 622

**[Docket No. 990615162–9162–01; I.D. 122298A]**

**RIN 0648–AM73**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Extension of Effective Date of Red Snapper Bag Limit Reduction

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

**ACTION:** Emergency interim rule; extension of effective date.

**SUMMARY:** An emergency interim rule is in effect through June 29, 1999, that reduces the daily bag limit for red snapper possessed in or from the exclusive economic zone (EEZ) of the Gulf of Mexico from five fish to four fish. NMFS extends the emergency interim rule for an additional 180 days. The intended effects of this rule are to maintain the current 4–fish bag limit consistent with the Gulf of Mexico Fishery Management Council's intent, avoid angler confusion that otherwise would result from an unintended in-season change in the bag limit, and help ensure that the recreational quota is not exceeded.

**DATES:** The effective date for the emergency interim rule published at 63 FR 72200, December 31, 1998, is extended from June 29, 1999, through December 26, 1999.

**ADDRESSES:** Copies of documents supporting this rule may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St Petersburg, FL 33702.

**FOR FURTHER INFORMATION CONTACT:** Roy Crabtree, phone: 727–570–5305 or fax: 727–570–5583.

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico Fishery Management Council (Council) prepared the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico (FMP). Regulations at 50 CFR part 622 implement the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

In response to a request from the Council, NMFS published an emergency interim rule (63 FR 72200, December 31, 1998), under section 305(c)(1) of the Magnuson-Stevens Act, that reduced the daily bag limit for red snapper possessed in or from the EEZ of the Gulf of Mexico from five fish to four fish. This reduction in the bag limit was, and still is, necessary to maintain the recreational harvest rate at a level that will allow the recreational fishing season to be extended without exceeding the quota. The December 31, 1998, emergency interim rule is effective through June 29, 1999. Under the FMP framework procedure for regulatory adjustments, the Council has submitted a regulatory amendment to NMFS for review that contains a proposed reduction in the red snapper bag limit from five fish to four fish. If NMFS approves and implements the proposed bag limit reduction in the regulatory amendment, it is unlikely that it could be implemented prior to expiration of the current emergency interim rule on June 29, 1999. The result would be a temporary in-season change in the red snapper bag limit that would cause angler confusion and an increase in harvest rate that would be inconsistent with the current management regime. To avoid these negative impacts, NMFS extends the effective date of the emergency interim rule, consistent with section 305(c)(3)(B) of the Magnuson-Stevens Act, for 180 days beyond the June 29, 1999, expiration date that was specified for the emergency interim rule published December 31, 1998 (63 FR 72200).

NMFS solicited public comments on the initial emergency interim rule; no comments were received. On June 8, 1999, NMFS issued an emergency interim rule to increase the minimum size limit for red snapper in the Gulf EEZ from 15 inches (38.1 cm) to 18 inches (45.7 cm) for persons subject to the bag limit and to announce the closure of the recreational red snapper fishery in the Gulf EEZ effective 12:01 a.m., local time, August 29, 1999 (64 FR 30445, June 8, 1999). Upon closure of the recreational red snapper fishery, the bag limit becomes zero and will remain so until the recreational fishery is reopened, as provided by 50 CFR 622.43(a)(1)(ii).

Additional details concerning the basis for the reduction of the red snapper bag limit are contained in the preamble to the initial emergency interim rule and are not repeated here.

### Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that the extension of the emergency interim rule is necessary to maintain regulatory consistency, to avoid confusion among the regulated public, and to help ensure that the recreational

red snapper quota is not exceeded. The AA has also determined that this extension is consistent with the Magnuson-Stevens Act and other applicable laws.

This extension of the emergency interim rule is not subject to review under E.O. 12866.

NMFS prepared an economic evaluation of the regulatory impacts associated with the emergency interim rule. The economic evaluation indicates that the major effects of the emergency interim rule are the generation of non-quantifiable positive economic benefits, compared with those of the status quo that should accrue because of consistency of bag limit measures throughout the year and of a lengthening of the recreational fishery's open season. The economic consequences of the rule are summarized as ranging from a small to a significant increase in economic benefits for the recreational red snapper fishery. Copies of the economic evaluation are available (see **ADDRESSES**).

The extension of the emergency interim rule continues the current 4–fish red snapper bag limit, thereby maintaining a recreational harvest rate consistent with extending the recreational red snapper fishing season without exceeding the recreational quota. The rule will also avoid angler confusion that otherwise could result from an inadvertent in-season change in the bag limit. A delay in implementing this action would result in unnecessary adverse impacts on those entities dependent on the red snapper recreational fishery, including the associated fishing communities. Accordingly, pursuant to authority set forth at 5 U.S.C. 553(b)(B), the AA finds that these reasons constitute good cause to waive the requirement to provide prior notice and the opportunity for prior public comment because the delay associated with such procedures would be contrary to the public interest.

Similarly, under 5 U.S.C. 553(d)(3), the AA finds for good cause that a 30-day delay in the effective date of this rule would be contrary to the public interest.

Because prior notice and an opportunity for public comment are not required to be provided for this extension by 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*., are inapplicable.

Dated: June 17, 1999.

Penelope D. Dalton, Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–16085 Filed 6–23–99; 8:45 am]

BILLING CODE 3510–22–F

# Proposed Rules

Federal Register
Vol. 64, No. 121
Thursday, June 24, 1999

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

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### 23 CFR Part 655

**[FHWA Docket No. FHWA–1998–4720]**

**RIN 2125–AE50**

## Revision of the Manual on Uniform Traffic Control Devices; Tourist Oriented Directional Signs, Recreation and Cultural Interest Signs, and Traffic Controls for Bicycle Facilities

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of proposed amendments to the Manual on Uniform Traffic Control Devices (MUTCD); request for comments.

**SUMMARY:** The MUTCD is incorporated by reference in FHWA regulations regarding traffic control devices on Federal-aid and other streets and highways, approved by the Federal Highway Administrator, and recognized as the national standard for traffic control on all public roads.

This document proposes new text for the MUTCD in Chapter 2G-Tourist Oriented Directional Signs (TODS), Chapter 2H-Recreation and Cultural Interest Area Signs, and Part 9, Traffic Controls for Bicycle Facilities. The purpose of this rewrite effort is to reformat the text for clarity of intended meanings, to include metric dimensions and values for the design and installation of traffic control devices, and to improve the overall organization and discussion of the contents in the MUTCD. The proposed changes to the MUTCD are intended to expedite traffic, promote uniformity, improve safety, and incorporate technology advances in traffic control device application.

**DATES:** Submit comments on or before March 24, 2000.

**ADDRESSES:** Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the notice of proposed amendments contact Ms. Linda Brown, Office of Highway Safety, Room 3414, (202) 366–2192, or Mr. Raymond Cuprill, Office of Chief Counsel, Room 4217, (202) 366–0834, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

### Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL 401, by using the universal resource locator (URL):http/dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this notice of proposed amendment may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: http://www.nara.gov/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/nara.

The text for the proposed sections of the MUTCD is available from the FHWA Office of Highway Safety (HHS–10) or from the FHWA Home Page at the URL: http://www.ohs.fhwa.dot.gov/devices/mutcd.html. Please note that the current rewrite sections contained in this docket for MUTCD Chapters 2G, 2H, and Part 9 will take approximately 8 weeks from the date of publication before they will be available at this web site.

### Background

The 1988 MUTCD with its revisions are available for inspection and copying as prescribed in 49 CFR Part 7. It may be purchased for $57.00 (Domestic) or $71.25 (Foreign) from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954, Stock No. 650–001–00001–0. This document is being issued to provide an opportunity for public comment on the desirability of proposed amendments to the MUTCD. Based on the comments received and upon its own experience, the FHWA may issue a final rule concerning the proposed changes included in this document.

The National Committee on Uniform Traffic Control Devices (NCUTCD) has taken the lead in this effort to rewrite and reformat the MUTCD. The NCUTCD is a national organization of individuals from the American Association of State Highway and Transportation Officials (AASHTO), the Institute of Transportation Engineers (ITE), the National Association of County Engineers (NACE), the American Public Works Association (APWA), and other organizations that have extensive experience in the installation and maintenance of traffic control devices. The NCUTCD voluntarily assumed the arduous task of rewriting and reformatting the MUTCD, which is incorporated by reference in 23 CFR part 655, subpart F. The NCUTCD proposal is available from the U.S. DOT Dockets (see address above). Pursuant to 23 CFR Part 655, the FHWA is responsible for approval of changes to the MUTCD.

The FHWA announced its intent to rewrite and reformat the MUTCD on January 10, 1992, at 57 FR 1134. Although the MUTCD will be revised in its entirety, it is being completed in phases due to the enormous volume of text. The FHWA reviewed the NCUTCD's proposal for MUTCD Part 3—Markings, Part 4—Signals, and Part 8—Traffic Control for Roadway-Rail Intersections. The summary of proposed changes for Parts 3, 4, and 8 were published as Phase 1 of the MUTCD rewrite effort in a previous notice of proposed amendment dated January 6, 1997, at 62 FR 691. The FHWA reviewed the NCUTCD's proposal for Part 1—General Provisions and Part 7—Traffic Control for School Areas. The summary of proposed changes for Parts 1 and 7 were published as phase 2 of the MUTCD rewrite effort in a previous notice of proposed amendment dated December 5, 1997, at 62 FR 64324. The FHWA reviewed the NCUTCD's proposal for Chapter 2A—General Provisions and Standards for Signs, Chapter 2D—Guide Signs for

Conventional Roads, Chapter 2E—Guide Signs for Expressways and Freeways, Chapter 2F—Specific Service Signs, and Chapter 2I—Signing for Civil Defense. The summary of proposed changes for Chapters 2A, 2D, 2E, 2F, and 2I were published as Phase 3 of the MUTCD rewrite effort in a previous notice of proposed amendment dated June 11, 1998, at 63 FR 31950.

This notice of proposed amendment is Phase 4 of the MUTCD rewrite effort and includes the summary of proposed changes for MUTCD Chapter 2G, Chapter 2H, and Part 9. The public will have an opportunity to review and comment on the remaining parts of the MUTCD in a future notice of proposed amendment. The remaining parts and chapters are as follows: Part 5—Traffic Control for Low Volume Roads; Part 6—Traffic Control for Construction, Maintenance, Utility, and Incident Management; Part 10—Traffic Control for Light Rail Operations; Chapter 2B—Regulatory Signs; and Chapter 2C—Warning Signs; Update for Part 1—General Provisions; and an Update for Part 4—Signals.

The FHWA invites comments on the proposed text for Chapter 2G, Chapter 2H, and Part 9 of the MUTCD. A summary of the significant changes contained in these sections of the Manual are discussed in this notice of proposed amendment. The proposed new style of the MUTCD would be a 3-ring binder with 8½ x 11 inch pages. Each part of the MUTCD would be printed separately in a bound format and then included in the 3-ring binder. If someone needed to reference information on a specific part of the MUTCD, it would be easy to remove that individual part from the binder. The proposed new text would be in column format and contain four categories as follows: (1) Standards—representing ''shall'' conditions; (2) Guidance—representing ''should'' conditions; (3) Options—representing ''may'' conditions; and (4) Support—representing descriptive and/or general information. This new format would make it easier to distinguish standards, guidance, and optional conditions for the design, placement, and application of traffic control devices. For review purposes during this rewrite effort, dimensions will be shown in both metric and English units. This will make it easier to compare text shown in the 1988 Edition with the proposed new edition. However, the adopted final version of the new MUTCD will be solely in metric units. This effort to rewrite and reformat the MUTCD will be an ongoing activity over the next two to three years.

**Discussion of Proposed Amendments to Chapter 2G—Tourist Oriented Directional Signs (TODS)**

The following items are the most significant proposed revisions to Chapter 2G:

In Section 2G.1, paragraph 1, the FHWA proposes to define the terms ''panel'' and ''sign'' as used throughout Chapter 2G. The proposed definition is as follows: A ''panel'' consists of the name or identification of the business, service, or activity facility. A tourist oriented directional ''sign'' consists of one or more panels.

In Section 2G.1, paragraph 5, the FHWA proposes to add a recommended criteria that tourist oriented directional signs (TODS) should not be used where the facility and its on-premise advertising signs are readily visible from the roadway. This is consistent with the proposed criteria for specific service signs (Chapter 2F) in a previously published notice of proposed amendment.

In Section 2G.2, paragraph 2, the FHWA proposes to include a standard that each tourist oriented directional panel shall display only one eligible business, service, or activity facility.

In the 1988 MUTCD, Figure 2–53 shows 6 feet as the maximum sign height for tourist oriented directional signs. To be consistent with the figure, the FHWA proposes to include a discussion of this 6 feet maximum sign height in paragraph 1 of the proposed text for Section 2G.4, Arrangement and Size of Signs. The FHWA also proposes to clarify the text previously contained in the 1988 MUTCD for the arrangement, number, and size of tourist oriented directional signs.

In 2G.5, paragraph 6, the FHWA proposes to include an OPTION to clarify that in cases where directional word messages such as NEXT RIGHT (LEFT) or AHEAD are appropriate for application, this additional information may be added to the 6 feet maximum sign height.

In Section 2G.6, paragraph 5, the FHWA proposes to require that all tourist directional signs (TODS), rather than only the advance TODS signs as in the 1988 MUTCD, shall not obstruct the road user's view of other traffic control devices. This is consistent with the current policy that the location of other traffic control devices takes precedence over the location of TODS.

In Section 2G.7, paragraph 1, the FHWA proposes to add the equal opportunity criteria of Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352, 78 Stat. 241) as a STANDARD condition for TODS, since most Federal programs require compliance with the Title VI regulations. This is consistent with what was proposed for specific service signs in Section 2F.1, paragraph 4.

**Discussion of Proposed Amendments to Chapter 2H—Recreation and Cultural Interest Symbol Signs**

The following are the most significant proposed changes to Chapter 2H:

Chapter 2H contains standards for the design, application, and placement of recreational and cultural interest signs. Based on a Memorandum of Understanding between the Federal Highway Administration and the U.S. Department of Agriculture Forest Service, many of the symbols used by the Forest Service are adopted by reference in the MUTCD and ''Standard Highway Signs'' (SHS) Book.[1] These symbols were referred to as the ''88 Forest Service Symbol Signs.'' In 1997, the Forest Service submitted a request to modify some and adopt other recreational and cultural interest area symbols. Diagrams of these signs are shown in the proposed text. The proposed text can be requested from the FHWA, Office of Highway Safety as indicated in the preface of this notice of proposed amendment.

The FHWA proposes to modify the following existing recreation and cultural interest signs to improve their visibility and make the sign design less complex: Litter Container (RG–130), Ranger Station (RG–170), Picnic Area (RM–120), Laundry (RA–060), Sleeping Shelter (RA–110) and Interpretative Trail (RL–130).

The FHWA is proposing to adopt the following Forest Service symbols and include them in the SHS Book: Motor Home (RM–200), Group Picnicking (RM–220), Group Camping (RM–210), Dog (RG–240), Seaplane (RG–260), Family Restroom (RA–150), Helicopter (RA–160), All-Terrain Vehicle (RL–170), Archer (RL–190), Hang Glider (RL–210), Fishing Pier (RW–160), Hand Launch for Boating (RW–170), Kayak (RW–190), Wind Surf (RW–210), and Chairlift for Skiing (RS–100).

In Section 2H.1, the FHWA proposes to expand the use of recreation and cultural interest signs to provide the OPTION of using these symbols on directional guide signs found on expressways and freeways. The 1988

[1] ''Standard Highway Signs,'' FHWA, 1979 Edition is included by reference in the 1988 MUTCD. It is available for purchase from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. It is available for inspection and copying at the FHWA Washington Headquarters and all FHWA division Offices as prescribed at 49 CFR part 7.

MUTCD provided only the Winter and Marine recreation and cultural interest signs for use on expressway and freeway guide signs.

Table II–6, ''Category and Usage Chart'' on pages 2H–3 and 2H–4 of the 1988 MUTCD has been deleted. Based on the FHWA's proposal to expand the use of recreation and cultural interest signs to include not just conventional roads but also to include unrestricted use on expressways and freeways as well, the discussion of road/type usage is no longer appropriate. In addition, the signs and series numbers are more appropriate for inclusion in the SHS Book.

In Section 2H.5, paragraph 1, the FHWA proposes to delete Table II–7, ''Sign Sizes,'' of the 1988 MUTCD which shows the recreational and cultural interest sign sizes based on road types. Instead of using this table to discuss road types and sign sizes, the FHWA proposes to discuss only the information on sign sizes. This information will be shown in paragraph format rather than in a table.

In Section 2H.6, paragraph 1, the FHWA proposes to recommend that the width of educational plaques used with recreational and cultural interest signs should be equal to the width of the symbol sign. This proposed change will simplify manufacturer specifications and sign installation procedures.

In the 1988 MUTCD, Sections 2H–10 through 2H–15 gave a general description of the categories of recreation and cultural interest symbol signs. The FHWA proposes to delete these sections since the category titles are self-explanatory and the categories are shown in Section 2H.4 of the proposed text. The FHWA proposes to show diagrams and details for each sign category in the SHS Book.

**Discussion of Proposed Amendments to Part 9—Traffic Controls for Bicycle Facilities**

The discussions contained in the following sections of the 1988 MUTCD are proposed for deletion: Sections 9A–1, 9A–4, 9A–6, 9A–7, and 9A–9. The information contained in these sections can be found in Part 1 of the MUTCD and to repeat this information would appear redundant.

In Section 9A.3, two additional definitions have been proposed: ''bicycle lane'' and ''shared use path.'' These terms were not listed in the definitions section of the proposed text for Part 1, published in the **Federal Register** dated December 5, 1997. However, the FHWA plans to add these terms to the proposed definitions section of MUTCD Part 1, in a notice of proposed amendment which will be published at a later date. In Part 9 of the 1988 MUTCD, the term ''designated bicycle lane'' was used. The definition for the proposed term ''bicycle lane'' is similar to the definition of ''designated bicycle lane.'' In Part 9 of the 1988 MUTCD the term ''bicycle trail'' was used. The definition for the proposed term ''shared use path'' is similar to the definition of ''bicycle trail'' except it has been expanded to include wheelchair users, skaters, pedestrians, and joggers.

In Section 9B.1, the FHWA proposes to combine the discussion on application and location of signs as previously discussed in sections 9B–1 and 9B–2 of the 1988 MUTCD into one section entitled, ''Application and Placement of Signs.'' In paragraph 2, the FHWA proposes to include the dimensions shown in Figure 9–1 of the 1988 MUTCD for lateral sign clearance so that the text discusses the same information shown in the figure. The FHWA proposes to change the minimum vertical mounting height for ground-mounted signs used on shared-paths clearance from 1.2 m (4 feet) to 2.1 m (7 feet) as proposed in Section 2A–18. The minimum mounting height of signs used on bicycle paths would remain 1.2 m (4 feet).

The FHWA proposes to add a new Table 9B.1 ''Bikeway Sign Sizes.'' This table shows the dimensions and sizes that are contained in the SHS Book. The table eliminates the need to show the dimensions and sizes in the associated MUTCD text discussion and the need to refer the reader to the SHS Book.

In Section 9B.6, the FHWA proposes to change the title (shown in the 1988 MUTCD Section 9B–8) from ''Designated Lane Signs'' to ''Preferential Bicycle Lane Signs.'' This proposed change is consistent with the definition section in Part 1 of the MUTCD rewrite.

In Section 9B.7, the FHWA proposes to change the title (shown in the 1988 MUTCD Section 9B–9) from ''Travelpath Restriction Signs'' to ''Shared Use Path Restriction Sign.'' This proposed change in terminology more clearly indicates the specific sign and the specific message that a facility is to be shared by pedestrians and bicycles.

In Section 9B.9, the FHWA proposes to change the title (shown in the 1988 MUTCD Section 9B–11) from ''No Parking Signs'' to ''No Parking Bicycle Lane Signs.'' This proposed change more clearly distinguishes the fact that the signs are intended for bicycle lanes.

In Section 9B.10, the FHWA proposes to change the title (shown in the 1988 MUTCD Section 9B–12) from ''Lane Use Control Signs'' to ''Bicycle Preferential Lane-Use Control Signs.'' This proposed change more clearly distinguishes lane-use control signs that relate to bicycle traffic.

In Section 9B.17, paragraph 2, the FHWA proposes to change the GUIDANCE from the 1988 MUTCD which recommends that the ''Bicycle Route Marker'' (M1–8) should be used to establish a unique designation for a State or local bicycle route. The FHWA proposes to change this condition to an OPTION.

In Section 9C.2, paragraph 3, the FHWA proposes to clarify the previous language in the 1988 MUTCD related to word messages stenciled in the bike lanes. The FHWA proposes to clearly indicate that this should be recommended practice. Pavement markings provide important information to bicyclists, especially since the location of the pavement marking is directly in the bicyclist's line of vision while traveling. The FHWA is also proposing to add a new GUIDANCE to recommend that pavement marking materials that will minimize loss of traction for bicycles under wet conditions should be selected.

In Section 9C.3, paragraph 7, the FHWA proposes to change the GUIDANCE to an OPTION for using a solid white line to separate different types of users on shared use paths. The reason for this proposed change is because there are other methods of separation that may be used such as different pavement textures or materials.

The FHWA proposes to change the title of Section 9C.4 from ''Marking of Designated Bikeways'' to ''Marking of Preferential Bicycle Lanes.'' This proposed change is consistent with the proposed new term ''Preferential Bicycle Lane'' that is defined in the proposed new Section 1A.14, ''Definitions.'' Also in Section 9C.4, paragraph 2, the FHWA proposes to add a sentence requiring signs to be used with the preferential lane symbol. Using signs is particularly important for notifying drivers of the appropriate travel lane for vehicle positioning so as to prevent conflict with bicycle traffic. The FHWA proposes to include the following new figures to demonstrate proper installation of pavement marking treatments: Figure 9–4, ''Typical Pavement Markings for Preferential Bicycle Lane on Two-Way Street''; Figure 9–7, ''Typical Preferential Bicycle Lane Treatment at Right Turn Only Lane''; and Figure 9–8, ''Typical Preferential Bicycle Lane Treatment at Parking on Two-Way Street with Parking and Right Turn Only Lane.''

The FHWA is also proposing to delete the preferential lane symbol (diamond) for bicycles. The intended meaning of this symbol is to indicate ''exclusive use lanes.'' However, many people misinterpret the meaning of this symbol to apply to high occupancy vehicles (HOV) lanes only. Both the R3–16 and R3–17 signs and the pavement marking would be affected by this proposed change. Bicycle lanes would be identified by using the bicycle symbol or the words ''BIKE LANE'' or ''BIKE LANE ONLY'' as pavement markings. See Figure 9–5 for an example of these markings. Please note that such a change would include a very generous phase-in period so as not to be a financial burden on those implementing the changes. FHWA is considering a compliance date of 7 to 10 years after publication in the **Federal Register**.

FHWA is also adding two new symbol signs: (1) the R3–17a is for situations where ''on street parking'' is allowed next to a bicycle lane, and (2) the R3–16a is used to indicate that a bicycle lane is ending.

In Section 9C.6 the FHWA proposes changing the title from ''Object Markers on Bicycle Trails'' to ''Object Markers on Shared Use Paths.'' The proposed term ''Shared Use Paths'' is a more accurate description than bicycle trails. The proposed definition of shared use paths is ''A separate trail or path from which motor vehicles are prohibited and which is for the shared use of bicyclists, skaters, wheelchair users, joggers, and pedestrians. Where such trail or path forms a part of a highway, it is separated from the roadways for motor vehicle traffic by an open space or barrier.''

The FHWA proposes including a separate Section 9C.7 to cover the discussion on pavement markings used for obstructions on bikeways. Although this discussion was formerly included as part of the discussion on object markers, the FHWA believes that separating these two distinct types of traffic control devices is appropriate.

In Section 9D.2, the FHWA proposes to combine the discussion on visibility requirements with the discussion on signal operations for bicycles. In the 1988 MUTCD (Sections 9D–2 and 9D–3) these two discussions were inappropriately handled as separate sections. The two sections are related and should be combined. Instead of using the term ''programmed signals,'' the FHWA proposes to use the term ''visibility-limited signal faces.'' The FHWA proposes to make it a requirement that signal timing on bikeways be reviewed and adjusted to consider the visibility needs of bicyclists.

**Discussion of Adopted Amendments to Part 9 of the 1988 MUTCD**

The following adopted change was published in a previous final rule on June 19, 1998, at 63 FR 33546 and is highlighted in this discussion of proposed changes for purpose of consistency:

Section 9B.2, paragraph 5 has been modified to reference the option to use fluorescent yellow-green as the background color for Bicycle Crossing signs.

The following adopted change was published in a previous final rule on January 9, 1997, at 62 FR 1368 and is highlighted in this discussion of proposed changes for purpose of consistency:

Section 9B.15, paragraph 2 has been modified to reference the option to use the ''Share the Road'' (W16–1) sign in situations where there is a need to warn motorists to watch for bicyclists traveling along the highway.

**Rulemaking Analyses and Notices**

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

**Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures**

The FHWA has determined preliminarily that this action will not be a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. The new standards and other changes proposed in this notice are intended to improve traffic operations and provide additional guidance, clarification, and optional applications for traffic control devices. The FHWA expects that these proposed changes will create uniformity and enhance safety and mobility at little additional expense to public agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

**Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (Public Law 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed action on small entities. This notice of proposed rulemaking adds some new and alternative traffic control devices and traffic control device applications. The proposed new standards and other changes are intended to expedite traffic, improve safety, and provide a more uniform application of traffic control devices. Since most of the proposed revisions provide recommended practice, expanded guidance, and clarification of existing information, the FHWA hereby certifies that these proposed revisions would not have a significant economic impact on a substantial number of small entities.

**Unfunded Mandates Reform Act of 1995**

This proposed rule would not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532).

**Executive Order 12612 (Federalism Assessment)**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the FHWA anticipates that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, which requires that changes to the national standards issued by the FHWA shall be adopted by the States or other Federal agencies within two years of issuance. The proposed amendment is in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of the highway. To the extent that this amendment would override any existing State requirements regarding traffic control devices, it does so in the interests of national uniformity.

**Executive Order 12372 (Intergovernmental Review)**

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding

intergovernmental consultation on Federal programs and activities apply to this program.

**Paperwork Reduction Act**

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

**National Environmental Policy Act**

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

**Regulation Identification Number**

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

**List of Subjects in 23 CFR Part 655**

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs and symbols, Traffic regulations.

(23 U.S.C. 109(d), 114(a), 315, and 402(a); 23 CFR 1.32; 49 CFR 1.48)

Issued on: June 16, 1999.

**Gloria J. Jeff,**

*Federal Highway Deputy Administrator.*

[FR Doc. 99–16028 Filed 6–23–99; 8:45 am]

**BILLING CODE 4910–22–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Highway Administration

## 23 CFR Part 655

**[FHWA Docket No. FHWA–1999–5704]**

**RIN 2125–AE58**

## Revision of the Manual on Uniform Traffic Control Devices; Warning Signs and Traffic Controls for Highway-Light Rail Transit Grade Crossings

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of proposed amendments to the Manual on Uniform Traffic Control Devices (MUTCD); request for comments.

**SUMMARY:** The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, approved by the Federal Highway Administrator, and recognized as the national standard for traffic control on all public roads. The FHWA announced its intent to rewrite and reformat the MUTCD on January 10, 1992, at 57 FR 1134.

This document proposes new text for the MUTCD in Chapter 2C-Warning Signs and Part 10—Traffic Controls for Highway-Light Rail Transit Grade Crossings. The purpose of this rewrite effort is to reformat the text for clarity of intended meanings, to include metric dimensions and values for the design and installation of traffic control devices, and to improve the overall organization and discussion of the contents in the MUTCD. The proposed changes to the MUTCD are intended to expedite traffic, promote uniformity, improve safety, and incorporate technology advances in traffic control device application.

**DATES:** Submit comments on or before March 24, 2000.

**ADDRESSES:** Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the notice of proposed amendments: Ms. Linda Brown, Office of Transportation Operations, Room 3408, (202) 366–2192, or for legal issues: Mr. Raymond Cuprill, Office of Chief Counsel, Room 4217, (202) 366–0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

Internet users can access all comments received by the U.S. DOT Dockets, Room PL 401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this notice of proposed amendment may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

The text for the proposed sections of the MUTCD is available from the FHWA Office of Transportation Operations (HOTO–1) or from the FHWA at the URL: *http://www.ohs.fhwa.dot.gov/devices/mutcd.html.* Please note that the current proposed sections contained in this docket for MUTCD Chapters 2C and Part 10 will take approximately 8 weeks from the date of publication before they will be available at this web site.

**Background**

The 1988 MUTCD with its revisions are available for inspection and copying as prescribed in 49 CFR Part 7. It may be purchased for $57.00 (Domestic) or $71.25 (Foreign) from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954, Stock No. 650–001–00001–0. This notice is being issued to provide an opportunity for public comment on the desirability of proposed amendments to the MUTCD. Based on the comments received and its own experience, the FHWA may issue a final rule concerning the proposed changes included in this notice.

The National Committee on Uniform Traffic Control Devices (NCUTCD) has taken the lead in this effort to rewrite and reformat the MUTCD. The NCUTCD is a national organization of individuals from the American Association of State Highway and Transportation Officials (AASHTO), the Institute of Transportation Engineers (ITE), the National Association of County Engineers (NACE), the American Public Works Association (APWA), and other organizations that have extensive experience in the installation and maintenance of traffic control devices. The NCUTCD voluntarily assumed the arduous task of rewriting and reformatting the MUTCD. The NCUTCD proposal is available from the U.S. DOT Dockets (see address above). Pursuant to 23 CFR Part 655, the FHWA is responsible for approval of changes to the MUTCD.

Although the MUTCD will be revised in its entirety, it is being completed in phases due to the enormous volume of text. The FHWA reviewed the NCUTCD's proposal for MUTCD Part 3—Markings, Part 4—Signals, and Part 8—Traffic Control for Roadway-Rail Intersections. The proposed changes for Parts 3, 4, and 8 were published as Phase 1 of the MUTCD rewrite effort in a previous notice of proposed amendment dated January 6, 1997, at 62 FR 691. The FHWA reviewed the

NCUTCD's proposal for Part 1—General Provisions and Part 7—Traffic Control for School Areas. The proposed changes for Parts 1 and 7 were published as phase 2 of the MUTCD rewrite effort in a previous notice of proposed amendment dated December 5, 1997, at 62 FR 64324. The FHWA reviewed the NCUTCD's proposal for Chapter 2A—General Provisions and Standards for Signs, Chapter 2D—Guide Signs for Conventional Roads, Chapter 2E—Guide Signs for Expressways and Freeways, Chapter 2F—Specific Service Signs, and Chapter 2I—Signing for Civil Defense. The proposed changes for Chapters 2A, 2D, 2E, 2F, and 2I were published as Phase 3 of the MUTCD rewrite effort in a previous notice of proposed amendment dated June 11, 1998, at 63 FR 31950. The FHWA reviewed the NCUTCD's proposal for Chapters 2G—Tourist Oriented Directional Signs, Chapter 2H—Recreational and Cultural Interest Signs, and Part 9—Traffic Control for Bicycles. The proposed changes were published as Phase 4 of the MUTCD rewrite effort in a previous notice of proposed amendments in 1999.

This notice of proposed amendment is Phase 5 of the MUTCD rewrite effort and includes the summary of proposed changes for MUTCD Chapter 2C and Part 10. The public will have an opportunity to review and comment on the remaining parts of the MUTCD in a future notice of proposed amendment. The remaining parts and chapters are as follows: Part 5—Traffic Control for Low Volume Roads; Part 6—Traffic Control for Construction, Maintenance, Utility, and Incident Management; Chapter 2B—Regulatory Signs; and the following previously published parts of the MUTCD will be updated based on additional information which the FHWA has received: Part 1—Definitions; Part 3—Markings; Part 4—Signals; and Part 8—Traffic Control for Roadway-Rail Intersections.

The FHWA invites comments on the proposed text for Chapter 2C and Part 10 of the MUTCD. A summary of the significant changes contained in these sections of the Manual is provided in this notice of proposed amendment. The proposed new style of the MUTCD would be a 3-ring binder with 8½ x 11 inch pages. Each part of the MUTCD would be printed separately in a bound format and then included in the 3-ring binder. If someone needed to reference information on a specific part of the MUTCD, it would be easy to remove that individual part from the binder. The proposed new text would be in column format and contain four categories as follows: (1) Standards—representing ''shall'' conditions; (2) Guidance—representing ''should'' conditions; (3) Options—representing ''may'' conditions; and (4) Support—representing descriptive and/or general information. This new format would make it easier to distinguish standards, guidance, and optional conditions for the design, placement, and application of traffic control devices.

For review purposes during this rewrite effort, dimensions will be shown in both metric and English units. This will make it easier to compare text shown in the 1988 Edition with the proposed new edition. However, the adopted final version of the new MUTCD will be in metric units only with respect to design specifications, placement location, and spacing application. Dual units will be used for speed limit, guide sign distances, and other measurements which the public must read.

**Discussion of Proposed Amendments to Chapter 2C—Warning Signs**

The following items are the most significant proposed revisions to Chapter 2C:

1. Instead of repeating in Chapter 2C and other sections of the Manual the requirement that ''*all* signs be either retroreflective or illuminated unless otherwise stated in the MUTCD,'' the FHWA is proposing to refer the reader to the general statement in Section 2A.8 of the proposed new text. Also, instead of repeating the colors for warning signs shown in Chapter 2C, the FHWA is proposing to refer the reader to Table 2A.5. The discussion regarding the design of signs is deleted since it is more appropriate for inclusion in the ''Standard Highway Signs'' Book [1]. However, the FHWA proposes to add a Table 2C–2 to show the various warning sign sizes.

2. The FHWA proposes to reorder the discussion of warning signs so that the sections are discussed by category type and grouped by application. In Section 2C.4, the proposed Table 2C–1 shows the categories, application, appropriate sections, and sign numbers for the warning signs in Chapter 2C. The table is designed so that it is easy to reference this information. The section topics are grouped by roadway-related, traffic-related, and non-vehicle related categories.

3. In Section 2C.4, Table 2C–2 shows the sign sizes for various warning signs. The FHWA proposes to increase the minimum size of the ''Merge'' Sign (W4–1), ''Narrow Bridge'' Sign (W5–2), ''Two-Way Traffic'' Sign (W6–3), and the ''Double Arrow'' Sign (W12–1) from 600 mm (24 inches) to 750 mm (30 inches). This proposed change will make the minimum size consistent with the other signs in the respective sign series and will improve sign visibility for the road users.

4. In Section 2C.4, paragraph 2, the FHWA proposes to add language that explains when Standard, Minimum, and Expressway/Freeway size signs are used.

5. In Section 2C.6, the FHWA proposes to combine the discussions for each of the horizontal alignment signs (W1–1 through W1–5) into one section. The FHWA proposes to add a Table 2C–4 to give the reader specific guidance for determining when to use the horizontal alignment signs based on the number of alignment changes and based on whether or not the advisory speed is greater than, equal to, or less than 75 km/h (30 mph).

6. In Section 2C.7, the FHWA proposes to add a new discussion on the use of a Combination Horizontal Alignment/Advisory Speed Sign (W1–9). When used, this sign would be required to supplement the advance warning Turn and Curve Signs. The placement of this new sign is proposed for installation within the turn or curve itself so that drivers can see the appropriate speed as they manuever through the alignment change. The FHWA proposes a minimum size of 1200 x 1200 millimeters (48 x 48 inches).

7. In Section 2C.8, paragraph 1, the FHWA proposes to add a new sign (W1–10) and a new section to the MUTCD which allows the Turn and Curve signs to be combined with the Cross Road and Side Road signs. This would in effect create one warning sign which may be used to depict roadway conditions where intersections occur within a turn or curve.

8. In section 2C.12, the FHWA is considering allowing State and local departments of transportation the option of using the word message ''truck escape ramp'' signs since this term is very widely and commonly used. The FHWA proposes to continue to allow the use of the word message ''runaway truck ramps.'' This proposed change would make it optional to use either term. A new word message ''Truck Escape Ramp'' sign (W7–4c) would be allowed as an alternate to the ''Runaway Truck Ramp'' sign. In the last sentence of the first paragraph in Section 2C.12, for the benefit of the safety of road users, the

[1] ''Standard Highway Signs,'' FHWA, 1979 Edition (Metric) is included by reference in the 1988 MUTCD. It is available for inspection and copying at the FHWA Washington Headquarters and all FHWA Division Offices as prescribed at 49 CFR part 7.

FHWA proposes to recommend that ''No Parking'' signs be placed near the entrance to truck escape ramps due to the potentially hazardous nature of these ramp locations.

9. In the 1988 edition of the MUTCD, Section 2C–26, paragraph 6 discussed truck escape turnouts at hill crests and the optional use of diagrammatic signs for these situations. The FHWA proposes to delete this discussion from the proposed text in new section 2C.12 since it is more of a supporting-type discussion that applies to the roadway design characteristics. Although in the 1988 edition the FHWA mentioned that diagrammatic signs may be used, we did not suggest any application examples because the FHWA believes these type situations are best left to the discretion of the engineer.

10. In section 2C.13, the FHWA proposes to add an OPTION of using the Advisory Speed (W13–1) plaque to indicate the recommended speed for situations where the road abruptly narrows to a width that may require road users to reduce their speed.

11. In section 2C.20, the FHWA proposes to require the use of the Low Clearance sign to warn road users of clearances less than the statutory maximum vehicle height. Providing this critical information is especially important to operators of large vehicles.

12. In section 2C.21, the FHWA proposes to change the use of the Advisory Speed plaque (W13–1) which supplements the ''Bump'' (W8–1) and ''Dip'' (W8–2) signs from an OPTION to GUIDANCE. An engineering study should be conducted by the jurisdiction responsible for the roadway to determine whether or not the road user can safely negotiate the roadway condition and to determine if an advisory speed plaque should be installed.

13. In section 2C.22, the FHWA proposes to recommend that the Advisory Speed plaque (W13–1) be used to supplement the ''Pavement Ends'' (W8–3) sign when the change in roadway conditon requires road users to reduce their speed. The FHWA is also proposing to delete the use of the ''Pavement Ends'' (W8–3a) symbol sign. Since studies have shown that road users do not comprehend the symbol's message, the FHWA is proposing to recommend only the word message sign. A phase-in period for compliance is proposed to be 10 years after the effective date of the final rule or as signs are replaced within the 10 year period. This would allow for replacement after the normal service life of the signs.

14. On October 30, 1997, the FHWA received a telephone inquiry from Ms. Devra Pulley with DJS Associates, Inc. concerning the ''Low Shoulder'' symbol sign which is shown in one of the FHWA's publications entitled, ''Road Symbols Brochure.'' [2] The inquiry brought to our attention the fact that there is no accompanying discussion in the MUTCD for the ''Low Shoulder'' sign. The ''Standard Highway Signs'' Book shows a diagram of the word message ''Low Shoulder'' (W8–9) sign. However, the symbol shown in both the ''Road Symbols Brochure'' and the ''Standard Highway Signs'' Book is for the ''Shoulder Drop-off'' (W8–9a) sign and not the ''Low Shoulder'' sign. To rectify the confusion and discrepencies, the FHWA proposes to change the title of section 2C.23 to ''Shoulder Signs'' and to include language in the text for: the SOFT SHOULDER (W8–4) sign; the LOW SHOULDER (W8–9) sign; and the SHOULDER DROP-OFF (W8–9a) sign. The FHWA proposes to also recommend only word messages rather than symbols for each of these signs. Research studies have shown that the symbols are often misunderstood by the public and that the conditions are difficult to depict symbolically. A phase-in period for compliance is proposed to be 10 years after the effective date of the final rule or as signs are replaced within the 10 year period. This would allow for replacement after the normal service life of the signs.

15. In section 2C.25, paragraph 1, the FHWA proposes to combine sections 2C–15, 2C–16, and 2C–17 of the 1988 MUTCD into one section entitled, ''Advance Traffic Control Signs.'' The Advance Traffic Control signs consist of the ''Stop Ahead,'' the ''Yield Ahead,'' and the ''Signal Ahead'' warning signs. General application standards and guidance are provided.

16. In section 2C.27, the NCUTCD is proposing to delete the ''Lane Reduction Transition'' symbol sign and use the ''LANE ENDS MERGE LEFT'' word message sign as the recommended sign for use to warn of lane reduction situations. Comprehension studies have shown that this symbol is often misunderstood by the public and, until a better symbol is developed, the FHWA proposes to recommend the word message sign instead of the symbol. A phase-in period for compliance is proposed to be 10 years after the effective date of the final rule or as signs are replaced within the 10 year period. This would allow for replacement after the normal service life of the signs.

17. In section 2C.28, paragraph 5, the FHWA proposes to add a new sentence indicating that roadway delineation may also be used to notify road users of lane reduction situations. The option to use pavement markings in addition to the recommended signs will provide additional guidance information to the road users.

18. In section 2C.28, paragraph 6, the FHWA proposes to add a discussion indicating that, in situations where an extra lane has been added for slower moving traffic, a ''Lane Ends'' sign should be installed in advance of the end of the extra lane.

19. In section 2C.31, the FHWA is proposing to include an OPTION for engineers to install a new CROSS TRAFFIC DOES NOT STOP (W14–4P) plaque to warn road users that they are approaching a 2-way stop controlled intersection. A research study conducted by the Texas Transportation Institute (TTI) [3] documented that some drivers have difficulties distinguishing 2-way stop intersections from 4-way stop intersections. The TTI also studied various traffic control device treatments for 2-way stop control and their study results recommended this sign. This sign was also recommended in the ''Older Driver Highway Design Handbook.'' [4] FHWA believes that it is appropriate from a safety standpoint to add this new warning sign to help road users quickly identify the type of stop controlled intersection.

20. In section 2C.32, the FHWA is proposing to include GUIDANCE to clarify the difference between when the Exit Speed (W13–2) signs and the Ramp Speed (W13–3) signs should be used.

21. In section 2C.33, the FHWA proposes to combine the discussion in sections 2C–11 through 2C–14 of the 1988 Edition of the MUTCD into one section entitled, ''Intersection Signs.'' The FHWA also proposes to include a new supplemental street name plaque that may be used in conjunction with the Intersection Signs to provide advance information to the road user. This proposed Advance Street Name Plaque is black legend on a yellow background and is described in more detail in proposed section 2C.44.

22. The FHWA proposes to add a new section 2C.35 entitled, ''Motorized

[2] Road Symbols Brouchre,'' Stock No. 050–000–00152–1, is a vailable from the Government Printing Office, Superintendent of Documents, PO Box 37154, Pittsburgh, PA 15250–7954.

[3] Picha, D.L., C.E. Schuckel, J.A. Parham, and C.T. Mai. ''Traffic Control Devices at Two-Way Stop Controlled Intersections,'' Research Report 1374–1F, Texas Transportation Institute, College Station, Texas, November 1996.

[4] ''Older Driver Highway Design Handbook,'' Report No FHWA–RD–97–135, available from the FHWA Research and Technology Report Center, 9701 Philadelphia Court, Unit Q, Lanham, Maryland 20706.

Traffic Warning Signs.'' As shown in Table 2C–1, these are traffic related signs that may be used to notify road users of possible vehicles crossing or traveling along the roadway. The FHWA proposes to include a new ''Emergency Signal Ahead'' (W11–12) warning sign for use with the ''Emergency Vehicle (W11–8) warning sign. These 2 signs would be required in advance of all emergency beacon installations. The FHWA has also included the ''Share the Road'' (W16–1) word message supplemental plaque for use with the ''Motorized Traffic Warning Signs.'' The ''Share the Road'' sign was adopted in a final rule dated January 9, 1997, at 62 FR 1364.

23. Proposed Section 2C.36 discusses the application of the non-motorized traffic crossing signs. Section 2C.36 also proposes a new application for advance crossing and crossing signs. These two signs would be identical in design. In the past, the crossing signs were distinguished from the advance crossing signs by the use of crosswalk lines on the sign. The FHWA is proposing to delete the crosswalk lines on the crossing signs since motorist comprehension studies show that people really do not know the difference between the two signs. Instead of using crosswalk lines within the sign to indicate where the actual crossing is located, the FHWA proposes a crossing sign with a supplemental downward pointing arrow plaque to show the crossing location. For advance crossing situations, the FHWA proposes to use a crossing sign supplemented with an ''Ahead'' or ''XX feet'' plaque. The FHWA proposes a phase-in compliance period of 10 years after the date of the final rule or as signs are replaced within the 10 year period. This would allow for replacement of the existing crossing signs after the normal service life.

24. In Section 2C.38 and 2C.39, the FHWA proposes to add a new discussion on the use of supplemental warning plaques. When engineering judgment determines that road users need additional information beyond that contained in the main message of the warning sign, these supplemental warning plaques may be used. The supplemental warning plaques must be used in conjunction with the primary warning sign. The proposed series of supplemental warning plaques will consist of: the ''Share the Road'' Sign (W16–1); Distance Plaques (W16–2 through W16–4 and W7–3a); Supplemental Arrows (W16–5 through W16–7); the ''Advisory Speed'' Plaque (W13–1); the ''Hill Grade-Related'' Plaques (W7–2 and W7–3 series); the ''Advance Street Name'' Plaque (W16–9); and the ''Dead End'' and ''No Outlet'' plaques (W14–1 and W14–2). The FHWA also proposes to include Table 2C–5 to show the minimum sizes of supplemental warning plaques.

**Discussion of Adopted Amendments to Chapter 2C of the 1988 MUTCD**

The following adopted change was published in a previous final rule on June 19, 1998, at 63 FR 33546 and is highlighted in this disucssion of proposed changes for purposes of consistency:

In section 2C.36, paragraph 6, the FHWA has included a change which allows the OPTIONAL use of the color fluorescent yellow green for pedestrian, bicycle, and school advance crossing and crossing signs. Guidance for the recommended installation of these signs is also provided in section 2C.36, paragraph 7.

**Discussion of Proposed New Part 10—Traffic Controls for Highway-Light Rail Transit Grade Crossings**

1. The FHWA proposes to add a new part to the MUTCD entitled, ''Part 10—Traffic Controls for Highway-Light Rail Transit Grade Crossings.''

2. In Section 10B.1, paragraph 4, the FHWA proposes to add STOP, YIELD, and advance warning signs as eligible for installation at highway-light rail transit crossings. The FHWA believes these other signs will provide options and flexibility to local decision makers concerned with safety and traffic control at these specific light-rail transit grade crossings.

3. In Section 10C.2, the FHWA proposes to add a new standard ''Light Rail Transit'' advance warning sign (W10–6). This sign would be required for use on each roadway in advance of every highway-light rail transit crossing controlled by automatic (traffic) gates or flashing light signals. The ''Light Rail Transit'' advance warning sign (W10–6) would be optional in advance of light rail transit crossings on semi-exclusive alignments without automatic (traffic) gates or flashing light signals. This sign would also be optional in advance of highway-light rail transit crossings controlled by traffic signals only (i.e., mixed-use alignment).

4. In Section 10C.2, the FHWA proposes to add a new ''Light Rail Transit Both Directions'' warning sign (W10–6a). This sign would be recommended for use at intersections and mid-block crossings (including alleys and driveways) where light rail transit operates in both directions.

5. In Section 10C.5, the FHWA proposes to add new ''Light Rail Transit Only Lane'' regulatory signs (R15–4 series). These signs would be optional for use on a roadway lane limited to light rail transit use only. They would be used to indicate restricted lane use in semi-exclusive and mixed alignments. The purpose of the sign is primarily for multi-lane operations, where roadway users may need additional guidance on vehicle lane use and/or restrictions.

6. In Section 10C.6, the FHWA proposes to add a new ''Do Not Pass Light Rail Transit'' regulatory sign (R15–5). This sign would be optional for installation at mixed-use alignments. The purpose of the sign is to indicate that vehicles are not allowed to pass light rail transit cars that are loading or unloading passengers where there is no raised platform.

7. In Section 10C.7, the FHWA proposes to add a new ''No Vehicles On Tracks'' regulatory sign (R15–6). This sign would be optional for use in situations where the decision has been made to deter vehicles from driving on the trackway. The sign would be used: (1) Where either the cross street is solely for light rail transit and traffic is not permitted to turn down the intersecting street; or (2) where there are adjacent traffic lanes separated from the light rail transit lane by a curb.

8. In Section 10C.8, the FHWA proposes to add new ''Divided Highway With Light Rail Transit Crossing'' regulatory signs (R15–7 series). These signs would be optional as a supplemental sign on the approach legs of roadways that intersect with a divided highway where light rail transit cars operate in the median.

9. In Section 10C.11, the FHWA proposes to add a new ''Light Rail Transit Approaching'' warning sign (W10–7). This sign would be optional at signalized intersections near grade crossings where road users turning across the tracks are controlled by exclusive turn signal phases displaying a red indication. This sign would also be optional at crossings controlled by STOP signs, automatic (traffic) gates, or traffic signals where traffic turning across the tracks is not controlled by exclusive signal phases. The sign is intended to supplement the traffic control signal and to warn road users turning across the tracks that a light rail transit train may be approaching.

10. In Section 10C.12, the FHWA proposes to add a new ''Light Rail Station'' information sign (I–12). This use of this sign would be optional to direct road users to a light rail station or boarding location. The sign may be supplemented by the name of the transit system and by arrows.

11. In Section 10D.2 and throughout the text as appropriate, the FHWA

proposes to revise the term ''automatic gates'' to ''traffic gates.'' The purpose of the proposed change is that the FHWA believes the qualifier ''automatic'' is archaic in that most gates today are assumed to be automatic. Instead the FHWA believes ''traffic'' would be a more suitable qualifier.

12. In Section 10D.5, the FHWA proposes to include a special light rail transit traffic signal control indication. This signal indication would be recommended for control of light rail transit movements only. The indications are described as horizontal, diagonal, or vertical white bars. Additionally, the FHWA proposes to provide that the standard traffic control signal indications (typical red-, yellow-, green-ball and/or arrow) may also be used to control light rail transit movements.

**Rulemaking Analyses and Notices**

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

**Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures**

The FHWA has determined preliminarily that this action will not be a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. The new standards and other changes proposed in this notice are intended to improve traffic operations and safety, and provide additional guidance, clarification, and optional applications for traffic control devices. The FHWA expects that these proposed changes will create uniformity and enhance safety and mobility at little additional expense to public agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

**Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed action on small entities. This notice of proposed rulemaking adds some new and alternative traffic control devices and traffic control device applications. The proposed new standards and other changes are intended to improve traffic operations and safety, expand guidance, and clarify application of traffic control devices. The FHWA hereby certifies that these proposed revisions would not have a significant economic impact on a substantial number of small entities.

**Unfunded Mandates Reform Act of 1995**

This proposed rule would not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532).

**Executive Order 12612 (Federalism Assessment)**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the FHWA anticipates that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, which requires that changes to the national standards issued by the FHWA shall be adopted by the States or other Federal agencies within two years of issuance. The proposed amendments are in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of the highway. To the extent that this amendment would override any existing State requirements regarding traffic control devices, it does so in the interests of national uniformity.

**Executive Order 12372 (Intergovernmental Review)**

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

**Paperwork Reduction Act**

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

**National Environmental Policy Act**

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

**Regulation Identification Number**

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

**List of Subjects in 23 CFR Part 655**

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

(23 U.S.C. 109(d), 114(a), 315, and 402(a); 23 CFR 1.32; 49 CFR 1.48)

Issued on: June 18, 1999.

**Kenneth R. Wykle,**

*Federal Highway Administrator.*

[FR Doc. 99–16138 Filed 6–23–99; 8:45 am]

BILLING CODE 4910–22–P

## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

## 29 CFR Part 1910

**[Docket No. S–042]**

**RIN 1218–AB77**

## Employer Payment for Personal Protective Equipment

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

**ACTION:** Notice of Availability of Survey.

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) has completed a survey of current patterns of personal protective equipment (PPE) payment and usage. We have submitted the survey to the docket of our rulemaking concerning employer payment for PPE (Docket S–042). The survey is available for review, and we invite the public to comment and testify on the survey. Also, OSHA is requesting information about the impact of the proposed rule on the shipyard industry.

**DATES:** *Written comments.* Written comments must be postmarked by July 23, 1999. If you submit comments electronically through OSHA's internet site, you must transmit those comments by July 23, 1999.

*Informal pubic hearing.* The hearing is scheduled to begin at 9:30 a.m. on August 10, 1999.

*Notice of intention to appear, testimony, and documentary evidence.* Notices of intention to appear at the informal public hearing must be postmarked by July 16, 1999. If you will be requesting more than 10 minutes for your presentation, or if you will be submitting documentary evidence at the hearing, you must submit the full text of your testimony and all documentary evidence to the Docket Office, postmarked by July 23, 1999.

**ADDRESSES:** *Survey.* The Survey is available from the OSHA Docket Office (Docket S–042), Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW Washington, DC 20210. (Telephone: (202) 693–2350)

*Informal public hearing.* The hearing will be held in the auditorium of the U.S. Department of Labor (Frances Perkins Building), 200 Constitution Avenue, NW, Washington, DC

*Comments, Testimony, and Documentary Evidence.* Submit four copies of written comments, notices of intention to appear at the informal public hearing, testimony, and documentary evidence to the OSHA Docket Office at the address listed above. Please identify the document at the top of the first page as either a comment, notice of intention to appear, testimony, or documentary evidence. If your written comments are 10 pages or less, you may fax them to the Docket Office, but you must then submit a heard copy to the Docket Office postmarked within two days. The OSHA Docket Office fax number is (202) 693–1648.

You may also submit comments electronically through OSHA's Internet site. The URL of that site is as follows: http://www.osha-slc.gov/e-comments/e-comments-ppe.html. Please be aware that you may not attach materials such as studies or journal articles to your electronic comments. If you wish to include such materials, you must submit them separately in quadruplicate to the Docket Office at the address listed above. When submitting such materials to the Docket Office, you must clearly identify your electronic comments by name, date, and subject, so that we can attach them to your electronic comments.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On March 31, 1999, OSHA published a proposed rule (64 FR 15402) that would require employers to pay for required personal protective equipment, with limited exceptions for some types of protective footwear and protective eyewear.

We provided a written comment period and scheduled an informal public hearing to provide the public with opportunities to comment on the proposed rule and provide relevant data.

On May 24, 1999, OSHA published a **Federal Register** notice (64 FR 27941) rescheduling the hearing to begin on August 10, 1999, and extending the written comment period to July 23, 1999.

*Survey.* As discussed in the preamble of the proposed rule, OSHA conducted a nationwide telephone survey of employers to obtain more accurate data on current patterns of PPE payment and usage. The survey has been completed and is now available from the Docket Office (Docket S–042) for review and comment.

*Issue concerning impact of proposed rule on collective bargaining agreements.* After we issued the proposal, the Shipbuilders Council of America, a trade association of shipyards, contacted the Agency with concerns about the impact of the proposal on their members' collective bargaining agreements.

They told OSHA that the cost of welding gloves and other PPE, especially ''leathers'' worn to protect employees against welding sparks, slag, and molten metal, often is covered in their collective bargaining agreements. Some agreements split the cost between employers and employees, others cover the cost with pay premiums, others specify that employees pay for PPE. The Council also stated that the proposed rule would be very costly for its members.

OSHA did not specifically ask for comment on this exact issue in the proposal although we did note in the proposal that ''the longshoring and marine terminal industries have a unique employer-employee relationship in may ports'' (64 FR 15416). We asked if there were unique issues in these industries that should affect our considerations of the proposed rule.

Because of the concerns expressed by the Council, OSHA is interested in comments on whether requiring employers to pay for PPE, especially PPE such as ''leathers'' for welders, would impact the shipyard industry. Would collective bargaining agreements and hiring practices be affected? Would the kind of protective gear worn while welding change because of the proposed rule? What would be the cost to shipyard employers of any change in payment practices?

## II. Public Participation

### *Written Comments*

Interested parties are invited to submit written data, views, and comments with respect to the survey discussed above, and the questions relating to the maritime industry. If you wish to file written comments, you must submit them in one of the following forms: (1) Hard copy, in quadruplicate; or (2) an original (hard copy) with 1 disk (3½″ or 5¼″) in WordPerfect 5.0, 5.1, 6.0, 8.0, or ASCII, to the Docket Office, Docket No. S–042, Room N2625, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, DC 20210.

You may also submit written comments electronically, using OSHA's website: http://www.osha-slc.gov/e-comments/e-comments-ppe.html. However, please be aware that you cannot attach materials such as studies or journal articles to your electronic comment. If you wish to submit such materials to supplement your electronic comment, you must submit them separately (either in quadruplicate or in single copy plus diskette) to the Docket Office at the address noted above. You must clearly identify these materials by including your name and the date and subject of your electronic comments, so that we can attach the materials to your comments.

All comments, views, data, and arguments that we receive within the specified comment period will become part of the record and will be available for public inspection and copying at the above Docket Office address.

### *Informal Public Hearing*

The informal public hearing will begin at 9:30 a.m. on August 10, 1999, in the auditorium of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC. We will continue the hearing through August 20, 1999, depending on the number of public participants.

If you wish to participate in the hearing, you must file four copies of a notice of intention to appear. This notice must be postmarked on or before July 16, 1999. Your notice of intention to appear, which will be available for inspection and copying at the OSHA Docket Office (Room N2625), must contain the following information:

1. The name, address, and telephone number of each person to appear;

2. The capacity in which the person will appear;

3. The approximate amount of time required for the presentation;

4. The issues that will be addressed;

5. A brief statement of the position that will be taken with respect to each issue; and,

6. Whether the party intends to submit documentary evidence and, if so, a brief summary of that evidence.

Mail the notice of intention to appear to: Docket Office, Docket S–042, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. The telephone number of the Docket Office is (202) 693–2350.

You may also transmit your notice of intention to appear by facsimile to (202) 693–1648 (Attention: Docket S–042), by July 16, 1999, provided that you send an original and 3 copies of the notice to the Docket Office postmarked no more than 3 days later.

*Filing of Testimony and Evidence Before the Hearing*

If you request more than 10 minutes for your presentation at the hearing, or if you will be submitting documentary evidence, you must provide us with four copies of the complete text of the testimony and documentary evidence. One copy must not be stapled or bound and must be suitable for copying. You must provide the Docket Office with these materials postmarked no later than July 23, 1999.

We will review all testimony and evidence in light of the amount of time requested in the notice of intention to appear. If the information contained in a submission does not justify the amount of time requested, we will allocate a more appropriate amount of time and notify the participant of that fact prior to the informal public hearing.

If you do not submit your materials in accordance with the schedule and other requirements, we may limit your presentation to 10 minutes. We may also ask you to return for questioning at a later time.

Any party who has not filed a notice of intention to appear may be allowed to testify for no more than 10 minutes as time permits, at the discretion of the Administrative Law Judge, but will not be allowed to question witnesses.

Notices of intention to appear, testimony, and evidence will be available for copying at the Docket Office at the address noted above.

Signed at Washington, DC, this 21 day of June 1999.

**Charles N. Jeffress,**

*Assistant Secretary of Labor.*

[FR Doc. 99–16142 Filed 6–23–99; 8:45 am]

BILLING CODE 4510–26–M

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 300

**[FRL–6364–5]**

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

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent to delete Hebelka Auto Salvage Yard site from the National Priorities List; request for comments.

**SUMMARY:** The Environmental Protection Agency (EPA) Region III announces its intent to delete the Hebelka Auto Salvage Yard Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended. EPA and the Pennsylvania Department of Environmental Protection (PADEP) have determined that all appropriate CERCLA response actions have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and PADEP have determined that remedial activities conducted at the Site to date have been protective of public health, welfare and the environment.

**DATES:** Comments concerning the proposed deletion of this site from the NPL may be submitted on or before July 26, 1999.

**ADDRESSES:** Comments may be submitted to Deanna Moultrie, (3HS21), Project Manager, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania, 19103, (215) 814–5125.

Comprehensive information on this site is available for viewing at the Site information repositories at the following locations: U.S. EPA, Region 3, Public Reading Room, 1650 Arch Street, Philadelphia, PA 19103, (215) 814–3157; Weisenberg Township Building, 2175 Seipstown Road, Fogelsville, PA 18051, (610) 285–6660.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deanna Moultrie (3HS21), U.S. Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, PA, 19103, (215) 814–5125.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**



### I. Introduction

The Environmental Protection Agency (EPA) Region III announces its intent to delete the Hebelka Auto Salvage Yard Site, Lehigh County, Pennsylvania, from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and requests comments on this deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

EPA will accept comments on the proposal to delete this site from the NPL for thirty calendar days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the Site meets the deletion criteria.

### II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria have been met:

(i) EPA, in consultation with PADEP, has determined that responsible or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with PADEP, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with PADEP, has determined that the release poses no significant threat to public health or the environment and therefore, taking remedial measures is not appropriate.

### III. Deletion Procedures

In the NPL rulemaking published on October 15, 1984 (49 FR 40320), the Agency solicited and received comments on whether the notice of comment procedures followed for adding sites to the NPL should also be used before sites are deleted. Comments were also received in response to the amendments to the NCP proposed on February 12, 1985 (50 FR 5862). Deletion of sites from the NPL does not itself create, alter, or revoke any individuals rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management.

EPA Region III will accept and evaluate public comments before making a final decision to delete. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community may be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of this site:

(1) EPA Region III has recommended deletion and has prepared the relevant documents.

(2) PADEP has concurred with the deletion decision.

(3) Local notice will be published in local newspapers and distributed to appropriate federal, state and local officials and other interested parties. This local notice presents information on the site and announces the thirty (30) day public comment period on the deletion package.

(4) The Region has made information supporting the proposed deletion available in the Regional Office and local site information repository.

The comments received during the notice and comment period will be evaluated before the final decision to delete. The Region will prepare a Responsiveness Summary, which will address significant comments received during the public comment period. A deletion will occur after the EPA Regional Administrator places a document in the **Federal Register**. The NPL will reflect any deletions in the final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region III.

### IV. Basis for Intended Site Deletion

The Hebelka Auto Salvage Yard Superfund Site occupies approximately 20 acres within the headwaters of the Iron Run subdrainage basin in Lehigh County, Pennsylvania. The Site is the location of a former automobile junkyard and salvage operation involving junk cars, used storage tanks and miscellaneous scrap metals and debris with periods of activity between 1958 and 1979. The Pennsylvania Department of Environmental Resources reported that operations ceased in 1979.

The Site was purchased in 1958 by Mr. and Mrs. Joseph Hebelka, now deceased. The property is currently a part of the estate of Lovie Hebelka. In December 1985, the EPA Region III Field Investigation Team (FIT III) visited the Site for the purpose of conducting a Site Inspection (SI). The SI revealed the presence of two battery piles at the Site, termed the eastern pile and the western pile. The major contaminant identified at this site was lead in soils downgradient from the battery piles. The Site was proposed for inclusion on the Superfund National Priorities List on June 1, 1986 and finalized on that list on August 21, 1987.

Operable Unit 1 (OU1) addressed the areas of the Site with lead in soil concentrations above 560 mg/kg and the piles of scrap battery casings lying on top of these soil areas. Operable Unit 2 (OU2) addressed the soils outside of this high concentration area, the air in the vicinity of the Site, the groundwater in the vicinity (including nearby home well water), the nearby stream water and the stream sediments.

A Remedial Investigation and Feasibility Study (RI/FS) was conducted between March 1987 and July 1991 to define the nature and extent of contamination and to identify alternatives for remediating the Site conditions. Remedies for the Operable Units were selected and described in separate Records of Decision (ROD). ROD 1 was issued March 31, 1989 for OU1 and ROD 2 was issued September 30, 1991 for OU2. The remedy selected in ROD 1 was designed to prevent ingestion of lead-contaminated particles and soil in excess of health-based levels by removing them from the Site and treating and-or disposing of them. This was done by removing battery casings and recycling them. Recycling was proven to be impractical so they were disposed of in a RCRA landfill. Soil above health-based risk levels was excavated, stabilized offsite and deposited in a RCRA Subtitle D municipal landfill. Clean soil was then backfilled and revegetated. EPA determined that no further action was necessary at the Site for OU2 because contamination pathways via the site media posed no current or potential threat to human health and the environment. Therefore, the remedy chosen in ROD 1, eliminated the need for further action.

Because the remedies chosen for OU1 and OU2 did not result in hazardous substances remaining onsite above health-based levels, the five-year review process will not apply to this site.

The remedies selected for this site have been implemented in accordance with the Records of Decision. As a result of these remedies, human health threats and potential environmental impacts at this site have been eliminated. EPA and PADEP find that the remedies implemented continue to provide adequate protection of human health and the environment.

EPA, in concurrence with PADEP believes that the criteria stated in section II(i) for deletion of this site has been met. Therefore, EPA is proposing the deletion of this site from the NPL.

Dated: April 19, 1999.

**Diana Esher,**

*Acting Regional Administrator, Region III.*

[FR Doc. 99–15833 Filed 6–23–99; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

**[CC Docket Nos. 96–45 and 97–21; FCC 99–49]**

### Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Further notice of proposed rulemaking.

**SUMMARY:** In this document, the Commission proposes a method for allocating funds in the event that the Administrator's initial denial of a request for support is reversed by the Administrator or the Commission. The Commission proposes a method for allocating support when there is sufficient funding to support all telecommunications service and Internet access (priority one services) appeals, but not sufficient funding to support all internal connection appeals. The Commission also proposes a method for allocating support in the unlikely event that sufficient funds are not available for all priority one service appeals.

**DATES:** Comments are due on or before June 30, 1999.

**ADDRESSES:** All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission,

445 Twelfth Street, S.W., TW-A325, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Sharon Webber, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's document released on May 28, 1999. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 Twelfth Street, S.W., Washington, D.C., 20554.

## I. Introduction

1. In the this Further Notice of Proposed Rulemaking (Further Notice), we propose a method for allocating funds in the event that the Administrator's initial denial of a request for support is reversed by the Administrator or the Commission. Specifically, we propose a method for allocating support when there is sufficient funding to support all telecommunications service and Internet access (priority one services) appeals, but not sufficient funding to support all internal connection appeals. We also propose a method for allocating support in the unlikely event that sufficient funds are not available for all priority one service appeals.

2. The Commission's rules provide that an applicant may file a request for review with the Administrator or the Commission in connection with the Administrator's denial of an application. Although the Administrator has taken all reasonable and appropriate steps to ensure that it will be able to fund fully all appeals that may be granted, we conclude that it is necessary to adopt additional funding priority rules setting forth how funds will be allocated in the unlikely event that sufficient funds are not available at the appeal phase. Consistent with the Commission's funding priority rules, we propose that, when a filing window is in effect, the Administrator shall first fund all priority one service appeals that have been granted and, if sufficient funds remain, shall allocate funds to internal connection appeals at each descending single discount percentage, e.g., ninety percent, eighty-nine percent, and so on. In no case, however, would an applicant be able to receive support for internal connections below the discount level for which an applicant received support in the original application process. That is, if the Administrator were only able to provide support during the original application process to applicants at a discount level of seventy percent or above, an applicant would not be able to receive support on appeal for an internal connection request at a sixty-nine percent discount level. To the extent funds do not exist to fund all appeals granted within a single discount percentage, we propose that the Administrator allocate the remaining support on a pro rata basis within that single discount percentage. We seek comment on this proposal.

3. If the Administrator determines that sufficient funds are not available to fund all priority one service appeals, we propose that the Administrator allocate the available funds to all appeals for priority one services, i.e., telecommunications services and Internet access on a pro rata basis, irrespective of the discount level associated with the request. We believe that this is the best approach in light of both the funding priority rules, which grant first priority to requests for telecommunications services and Internet access, and the Commission's goal of ensuring that every eligible school and library receive some assistance. We seek comment on this proposal. In particular, we seek comment on how this proposed allocation method should be implemented in light of our appeal procedures, which permit applicants to seek review of decisions issued by the Administrator from either the Administrator or the Commission. We tentatively conclude that, to ensure an equitable distribution of funds to all priority one service appeals, the Administrator should wait until a final decision has been issued on all priority one service appeals before it allocates funds on a pro rata basis. We seek comment on this tentative conclusion. We also seek comment on whether it would be more appropriate for the Commission to permit the Administrator to use funds collected in the next funding year to fund priority one service appeals for the prior year. While we recognize that using funds collected for the next funding year may deplete the available funds for that year, we nevertheless seek comment on whether there are any advantage to such an approach. We also invite parties to submit alternative proposals that would enable the Administrator to distribute fairly funds for appeals in the event that sufficient funds are not available to fund all priority one service appeals.

4. We recognize that applicants must complete the installation of internal connections by a date certain for each funding year. We tentatively conclude that an applicant would be required to complete the installation of internal connections that received support pursuant to an appeal within six months from the date that the final decision on appeal is issued. We seek comment on this tentative conclusion.

5. Finally, pending the outcome of this Further Notice, we find that, if the Administrator is able to determine that sufficient funds are available to provide support for all priority one service appeals that may be granted for the first funding year, the Administrator may allocate support immediately to such appeals. To the extent funds remain, and the Administrator is able to determine that sufficient funds are available to allocate funds to all internal connection appeals down to the seventy percent discount level, i.e., the lowest discount level for which applicants received support during the original funding period, the Administrator may allocate support immediately to such internal connection appeals that may be granted.

## VI. Filing Procedures

6. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments by June 30, 1999. Pursuant to section 1.3 of the Commission's rules, 47 CFR 1.3, we find good cause to waive section 1.415(c) of the Commission's rules, which provides for the submission of replies to original comments. Dispensing with reply comments is crucial in light of the urgent need to provide definitive guidance to the Administrator regarding the priorities for allocating funds to applications whose initial denials are reversed by the Administrator or the Commission.

7. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an

e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

8. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Sheryl Todd, Federal Communications Commission, Common Carrier Bureau, Accounting Policy Division, 445 12th Street, S.W., room 5–A523, Washington, D.C. 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case (97–21)), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., room CY–B400, 445 Twelfth Street, S.W., Washington, D.C. 20554. For further information, please contact: Sharon Webber, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

9. Pursuant to section 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

## VII. Regulatory Flexibility Analysis

### *A. Initial Regulatory Flexibility Analysis*

10. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice of Proposed Rulemaking provided above. The Commission will send a copy of the Further Notice of Proposed Rulemaking, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the Further Notice of Proposed Rulemaking and IRFA (or summaries thereof) will be published in the **Federal Register**. *See* id.

11. *Need for an Objectives of the Proposed Rules.* The Commission's rules provide that an applicant may file a request for review with the Administrator or the Commission in connection with the Administrator's denial of an application. Although the Administrator has taken all reasonable and appropriate steps to ensure that it will be able to fund fully all appeals that may be granted, we conclude that it is necessary to adopt additional funding priority rules setting forth how funds will be allocated in the unlikely event that sufficient funds are not available at the appeal phase. Accordingly, the Further Notice proposes that, when a filing window is in effect, the Administrator shall first fund all priority one service appeals that have been granted and, if sufficient funds remain, shall allocate funds to internal connection appeals at each descending single discount percentage, e.g., ninety percent, eighty-nine percent, and so on. To the extent funds do not exist to fund all appeals granted within a single discount percentage, we propose that the Administrator allocate the remaining support on a pro rata basis within that single discount percentage. If the Administrator determines that sufficient funds are not available to fund all priority one service appeals, the Further Notice proposes that the Administrator allocate the available funds to all appeals for priority one services, i.e., telecommunications services and Internet access on a pro rata basis, irrespective of the discount level associated with the request.

12. *Legal Basis.* The proposed action is supported by sections 4(i), 4(j), 201–205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201–205, 254, and 403.

13. *Description and Estimate of the Number of Small Entities to which the proposed rules will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

14. *Schools and Libraries.* The Commission specifically noted in the *Universal Service Order* that the SBA defined small elementary and secondary schools and small libraries as those with under $5 million in annual revenues. The Commission further estimated that there are fewer than 86,221 public and 26,093 private schools and fewer than 15,904 libraries that may be affected by the decisions and rules adopted in the Universal Service Order. We believe that these same small entities may be affected potentially by the rules proposed in this Further Notice.

15. *Rural Health Care Providers.* The Commission noted in the *Universal Service Order* that neither the Commission nor the SBA has developed a definition of small, rural health care providers. Section 254(h)(5)(B) defines the term ''health care provider'' and sets forth the seven categories of health care providers eligible to receive universal service support. We estimated that there are fewer than 12,296 health care providers potentially affected by the rules in the *Universal Service Order.* We note that these small entities may

potentially be affected by the rules proposed in this Further Notice.

16. *Description of Projected Reporting, Record keeping, and Other Compliance Requirements.* We tentatively conclude that there will not be any additional burdens or costs associated with the proposed rules on any entities, including on small entities. We seek comment on this tentative conclusion.

17. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered.* In the FRFA to the *Universal Service Order*, the Commission described the steps taken to minimize the significant economic impact on a substantial number of small entities consistent with stated objectives associated with the Schools and Libraries section, the Rural Health Care Provider section, and the Administration section of the *Universal Service Order.* Our current action to amend our rules will benefit schools, libraries, and rural health care providers, by ensuring that funds are allocated first to the neediest schools and libraries and that schools, libraries, and rural health care providers will be able to receive any support approved by the Administrator that is not the subject of an appeal. We believe that the amended rules fulfill the statutory mandate to enhance access to telecommunications services for schools, libraries, and rural health care providers, and fulfill the statutory principle of providing quality services at ''just, reasonable, and affordable rates,'' without imposing unnecessary burdens on schools, libraries, rural health care providers, or service providers, including small entities.

18. *Federal Rules That May Overlap, Duplicate, or Conflict with the Proposed Rule.* None.

### VIII. Ordering Clauses

19. Accordingly, it is ordered that, pursuant to the authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), 403 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 218–220, 254, 303(r), 403 and 405, section 553 of the Administrative Procedure Act, 5 U.S.C. 553, and section 1.108 of the Commission's rules, 47 CFR 1.108, the Further Notice of Proposed Rulemaking is adopted.

20. It is further ordered that, because the Commission has found good cause, this Further Notice of Proposed Rulemaking is effective upon publication in the **Federal Register**.

21. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

### List of Subjects in 47 CFR Part 54

Healthcare providers, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 99–16182 Filed 6–23–99; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**RIN 1018–AF67**

## Endangered and Threatened Wildlife and Plants; Proposed Rule to Remove the Northern Populations of the Tidewater Goby From the List of Endangered and Threatened Wildlife

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Fish and Wildlife Service, pursuant to the Endangered Species Act of 1973, as amended (Act), proposes to remove the northern populations of the tidewater goby (*Eucyclogobius newberryi*) from the list of endangered and threatened wildlife. The species is now classified as endangered throughout its entire range. We have determined that north of Orange County there are more populations than were known at the time of the listing, that the threats to those populations are less severe than previously believed, and that the tidewater goby has a greater ability than was known in 1994 to recolonize habitats from which it is temporarily absent. This proposal would remove the northern populations of the tidewater goby from protection under the Act.

The Orange and San Diego counties population of tidewater goby, which constitutes a distinct population segment, is genetically distinct, is comprised of gobies from only six localities, and continues to be threatened by habitat loss and degradation, predation by non-native species, and extreme weather and streamflow conditions. Therefore, this distinct population segment will be retained as an endangered species on the List of Endangered and Threatened Wildlife.

**DATES:** We must receive comments from all interested parties by August 23, 1999. We must receive public hearing requests by August 9, 1999.

**ADDRESSES:** Send written comments and other materials concerning this proposal to Ms. Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003. You may inspect comments and materials received, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Carl Benz at the above address; telephone 805/644–1766, facsimile 805/644–3958.

**SUPPLEMENTARY INFORMATION:**

### Background

The tidewater goby was first described in 1857 by Girard as *Gobius newberryi.* Gill (1862) erected the genus *Eucyclogobius* for this distinctive species. The majority of scientists has accepted this classification (e.g., Bailey *et al.* 1970, Miller and Lea 1972, Hubbs *et al.* 1979, Robins *et al.* 1991, Eschmeyer *et al.* 1983). No other species has been described in this genus. A few older works and Ginsburg (1945) placed the tidewater goby and the eight related eastern Pacific species into the genus *Lepidogobius.* This classification includes the currently recognized genera *Lepidogobius, Clevelandia, Ilypnus, Quietula,* and *Eucyclogobius.* Birdsong *et al.* (1988) coined the informal *Chasmichthys* species group, recognizing the phyletic relationship of the eastern Pacific group with species in the northwestern Pacific.

Crabtree's (1985) allozyme work on tidewater gobies from 12 localities throughout the range shows fixed allelic differences at the extreme northern (Lake Earl, Humboldt Bay) and southern (Cañada de Agua Caliente, Winchester Canyon, and San Onofre Lagoon) ends of the range. The northern and southern populations are genetically distinct from each other and from the central populations sampled. The more centrally distributed populations are relatively similar to each other (Brush Creek, Estero Americano, Corcoran Lagoon, Arroyo de Corral, Morro Bay, Santa Ynez River, and Jalama Creek). Crabtree's results indicate that there is a low level of gene flow (movement of individuals) between the populations sampled in the northern, central, and southern parts of the range. However, Lafferty *et al.* (in prep.) point out that Crabtree's sites were widely distributed geographically, and may not be

indicative of gene flow on more local levels.

Recently, David Jacobs (University of California, Los Angeles, Department of Organismic Biology, Ecology and Evolution, *in litt.*, 1998) initiated an analysis of mitochondrial genetic material from tidewater goby populations ranging from Humboldt to San Diego counties. Preliminary results indicate the San Diego gobies separated from other gobies along the coast long ago. These southernmost populations likely began diverging from the remainder of the gobies in excess of 100,000 years ago. Furthermore, gobies from the Point Conception area are more closely related to gobies from Humboldt County than they are to the gobies analyzed in San Diego County.

The tidewater goby (*Eucyclogobius newberryi*) is a small, elongate, grey-brown fish with dusky fins not exceeding 50 millimeters (mm) (2 inches (in.)) standard length (SL). The tidewater goby is a short-lived species, apparently having an annual life cycle (Irwin and Soltz 1984, Swift *et al.* 1997). At the time of the listing, the species was believed to have more stringent habitat requirements and to be less likely to disperse successfully than recent research indicates (see below). These factors, coupled with the short life span of the tidewater goby, were believed to make most tidewater goby populations vulnerable to extirpation by human activities. At the time of the listing, we believed that approximately 50 percent of the documented populations had been extirpated. However, in spite of the many factors affecting coastal wetlands, recent survey data demonstrate a less than 25 percent permanent loss of the known tidewater goby populations (Ambrose *et al.* 1993; Swift *et al.* 1994; Lafferty *et al.* 1996; C. Chamberlain, U.S. Fish and Wildlife Service, Arcata, California, *in litt.* 1997; Lafferty 1997; Swift *et al.* 1997).

The tidewater goby inhabits coastal brackish water habitats entirely within California. Within the range of the tidewater goby, these conditions occur in two relatively distinct situations: (1) The upper edge of tidal bays, such as Tomales, Bolinas, and San Francisco bays near the entrance of freshwater tributaries, and (2) the coastal lagoons formed at the mouths of small to large coastal rivers, streams, or seasonally wet canyons, along most of the length of California. Few well authenticated records of this species are known from marine environments outside of enclosed coastal lagoons and estuaries (Swift *et al.* 1989). This may be due to the lack of collection efforts at appropriate times (i.e., following storm events or breachings when gobies are flushed from the estuaries and lagoons). Historically, the species ranged from Tillas Slough (mouth of the Smith River, Del Norte County) near the Oregon border to Agua Hedionda Lagoon (northern San Diego County).

The tidewater goby is often found in waters of relatively low salinities (around 10 parts per thousand (ppt)) in the uppermost brackish zone of larger estuaries and coastal lagoons. However, the fish can tolerate a wide range of salinities (Swift *et al.* 1989, 1997; Worcester 1992; K. R. Worcester, California Department of Fish and Game (CDFG), *in litt.* 1996; Worcester and Lea 1996), and is frequently found throughout lagoons. Tidewater gobies regularly range upstream into fresh water, and downstream into water of up to 28 ppt salinity (Worcester 1992, Swenson 1995), although specimens have been collected at salinities as high as 42 ppt (Swift *et al.* 1989). The species' tolerance of high salinities (up to 60 ppt for varying time periods) likely enables it to withstand the marine environment, allowing it to colonize or re-establish in lagoons and estuaries following flood events (Swift *et al.* 1989; K. R. Worcester, *in litt.* 1996; Worcester and Lea 1996; Lafferty *et al.* in prep.).

Tidewater gobies are usually collected in water less than 1 meter (m) (3 feet (ft)) deep; many localities have little or no area deeper than this (Wang 1982, Irwin and Soltz 1984, Swift *et al.* 1989, Swenson 1995). However, it has been found in waters over 1 m in depth (Worcester 1992, Lafferty and Altstatt 1995, Swift *et al.* 1997, Smith 1998). In lagoons and estuaries with deeper water, the failure to collect gobies may be due to the inadequacy of the sampling methods, rather than the lack of gobies (Worcester 1992, Lafferty 1997, Smith 1998).

Tidewater gobies often migrate upstream into tributaries up to 2.0 kilometers (km) (1.2 mile (mi)) from the estuary. However, in San Antonio Creek and the Santa Ynez River, Santa Barbara County, tidewater gobies are often collected 5 to 8 km (3 to 5 mi) upstream of the tidal or lagoonal areas, sometimes in beaver impounded sections of streams (Swift *et al.* 1989). The fish move upstream in summer and fall, as sub-adults and adults. There is little evidence of reproduction in these upper areas (Swift *et al.* 1997).

Populations originally inhabiting tidal areas, such as those found in San Francisco Bay, rarely were studied before they disappeared, and none remain to adequately study their use of truly tidal conditions. Several of the lagoonal habitats have been converted by human activities into tidal harbors and bays, such as Humboldt Bay, Elkhorn Slough, Morro Bay and Santa Margarita River, among others (Swift *et al.* 1989, 1993). Populations recently present in these artificially created tidal situations, such as Elkhorn Slough, Morro Bay, and Santa Margarita River, have disappeared in the last 5 to 10 years. The only remaining tidal system with tidewater gobies is Humboldt Bay (Swift *et al.* 1989; C. Chamberlain, *in litt.* 1997).

The life history of tidewater gobies is keyed to the annual cycles of the coastal lagoons and estuaries (Swift *et al.* 1989, 1994; Swenson 1994, 1995). Water in estuaries, lagoons and bays is at its lowest salinity during the winter and spring as a result of precipitation and runoff. During this time, high runoffs cause the sandbars at the mouths of the lagoons to breach, allowing mixing of the relatively fresh estuarine and lagoon waters with seawater. This annual building and breaching of the sandbars is part of the normal dynamics of the systems in which the tidewater goby has evolved (e.g., Zedler 1982, Lafferty and Alstatt 1995, Heasly *et al.* 1997). The time of sandbar closure varies greatly between systems and years, and typically occurs from spring to late summer. Later in the year, occasional waves washing over the sandbars can introduce some sea water, but good mixing often keeps the lagoon water at a few parts per thousand salinity or less. Summer salinity in the lagoon depends upon the amount of freshwater inflow at the time of sandbar formation (Zedler 1982, Heasly *et al.* 1997).

Males begin digging breeding burrows 75–100 mm (3–4 in.) deep, usually in relatively unconsolidated, clean, coarse sand averaging 0.5 mm (0.02 in.) in diameter, in April or May (Swift *et al.* 1989; Swenson 1994, 1995). Swenson (1995) has shown that tidewater gobies prefer this substrate in the laboratory, but also found tidewater gobies digging breeding burrows in mud in the wild (Swenson 1994). Inter-burrow distances range from about 5 to 275 centimeters (cm) (2 to 110 in.) (Swenson 1995). Females lay about 100–1000 eggs per clutch, averaging 400 eggs/clutch, with clutch size depending on the size of both the female and the male. Females can lay more than one clutch of eggs over their lifespan, with captive females spawning 6–12 times (Swenson 1995). Wild females may spawn less frequently due to fluctuations in food supply and other environmental conditions, but the species clearly has a high reproductive potential, enabling populations to recover quickly under suitable conditions. Male gobies remain in the

burrow to guard the eggs that are attached to sand grains in the walls of the burrow. Males also spawn more than once per season (Swenson 1995), and although they can have more than one clutch in their burrow, presumably from different females (Swift *et al.* 1989), Swenson (1995) found that males accepted only one female per brood period. Males frequently go for at least a few weeks without feeding, and this probably contributes to a mid-summer mortality often noted in populations (Swift *et al.* 1989; Swenson 1994, 1995).

Reproduction peaks during spring to mid-summer, late April or May to July, and can continue into November or December depending on the seasonal temperature and rainfall. Reproduction sometimes increases slightly in the fall (Swift *et al.* 1989; Camm Swift, Department of Biology, Loyola Marymount University, pers. comm., 1995). Reproduction takes place from 15–20 degrees Celsius© (60–65 degrees Fahrenheit (F)) and at salinities of 0–25 ppt (Swift *et al.* 1989; Swenson 1994, 1995). Typically, winter rains and cold weather interrupt spawning, but in some warm years reproduction may occur all year (Goldberg 1977, Wang 1984). Goldberg (1977) showed by histological analysis that females have the potential to lay eggs all year in southern California, but this rarely has been documented. Length-frequency data from southern and central California (Swift *et al.* 1989; Swenson 1994, 1995) and analysis of otoliths from central California populations (Swift *et al.* 1997) indicate that tidewater gobies are an annual species and typically live one year or less.

Tidewater goby eggs hatch in 7–10 days at temperatures of 15–18 degrees C (60–65 degrees F). The newly hatched larvae are 4–7 mm (0.2 in) in length and are planktonic for one to a few days. Once they reach 8–18 mm (0.3–0.8 in.) in length they become substrate oriented. All larger size classes are substrate oriented and, although little habitat segregation by size has been noted (Swift *et al.* 1989, Swenson 1995), Worcester (1992) did find that larval gobies in Pico Creek Lagoon tended to use the deeper portion of the lagoon. Individuals collected in marshes appear to be larger (43–45 mm (1.7–1.8 in.) SL) than those collected in open areas of lagoons (32–35 mm (1.3–1.4 in.) SL) (Swenson 1995).

Studies of the tidewater goby's feeding habits suggest that it is a generalist. At all sizes examined, tidewater gobies feed on small invertebrates, usually mysids, amphipods, ostracods, snails, and aquatic insect larvae, particularly dipterans (Irwin and Soltz 1984; Swift *et al.* 1989; Swenson 1994, 1995). The food items of the smallest tidewater gobies (4–8 mm (0.2–0.3 in.)) have not been examined, but these gobies, like many other early stage larval fishes, probably feed on unicellular phytoplankton or zooplankton (Swenson and McCray 1996).

Tidewater gobies may be preyed upon by native species such as steelhead (*Oncorhynchus mykiss*) (Swift *et al.* 1989), and are documented prey items of prickly sculpin (*Cottus asper*), staghorn sculpin (*Leptocottus armatus*), and starry flounder (*Platichthys californicus*) (Swift *et al.* 1997). However, tidewater gobies were found in stomachs of only 6 percent of nearly 120 of the latter three species examined, and comprised less than 20 percent by volume of the prey. Predation by the Sacramento perch (*Archoplites interruptus*) and tule perch (*Hysterocarpus traski*) may have prevented tidewater gobies from inhabiting the San Francisco Bay delta (Swift *et al.* 1989), although direct documentation to support this hypothesis is lacking.

Tidewater gobies also are preyed upon by non-native African clawed frogs (*Xenopus laevis*) (Lafferty and Page 1997), although this is probably not a significant source of mortality due to the limited distribution of this frog species in tidewater goby habitats. The frogs are killed by the higher salinities that occur when the lagoons are breached (Glenn Greenwald, U.S. Fish and Wildlife Service, pers. obs.). Several non-native fish species also prey on tidewater gobies. The shimofuri goby (*Tridentiger bifasciatus*), which has become established in the San Francisco Bay region (Matern and Fleming 1995), may compete with the smaller tidewater goby, based on dietary overlap (Swenson 1995) and foraging and reproductive behavioral observations in captivity. Shimofuri gobies have been observed to eat juvenile tidewater gobies in captivity, but usually were unable to catch subadult and adult tidewater gobies (Swenson and Matern 1995). Evidence of predation or competition in the wild is lacking (Swenson 1998). Competition with yellowfin (*Acanthogobius flavimanus*) and chameleon (*Tridentiger trigonocephalus*) gobies has also been hypothesized. Although Wang (1984) found that yellowfin gobies do prey on tidewater gobies, no data were presented indicating the extent of such interactions, nor has there been any further documentation of such competitive or predatory interactions with either species. Shapovalov and Taft (1954) documented the non-native striped bass (*Morone saxatilis*) preying on tidewater gobies in Waddell Creek Lagoon, but stated that striped bass were found only infrequently in the areas inhabited by the goby. Sunfishes and black bass (*Centrarchidae*) have been introduced in or near coastal lagoons and may prey heavily on tidewater gobies under some conditions. Predation by young-of-the-year largemouth bass (*Micropterus salmoides*) on tidewater gobies was documented in one system (Santa Ynez River), where tidewater gobies accounted for 61 percent of the prey volume of 55 percent (10 of 18) of the juvenile bass sampled (Swift *et al.* 1997). Although tidewater gobies disappeared soon after centrarchids were introduced at several localities, direct evidence that the introductions led to the extirpations is lacking (Swift *et al.* 1989, 1994; Rathbun *et al.* 1991; Dan Holland, Department of Biology, Southwestern Louisiana State University, Monroe, LA, pers. comm. 1991). In at least one location, tidewater gobies have re-established naturally (see below).

Lafferty *et al.* (1996) monitored post-flood persistence of 17 tidewater goby populations in Santa Barbara and Los Angeles counties during and after the heavy winter flows of 1995. All 17 populations persisted after the high flows, and no significant changes in population sizes were detected. In addition, gobies apparently colonized Cañada Honda, approximately 10 km (6 mi) from the closest known population, during or after the flooding (Swift *et al.* 1997). Lafferty *et al.* (in prep.) estimated the extirpation and recolonization rates for 37 populations in southern California, based on over 250 presence-absence records. They found higher recolonization rates than expected, and suggested that there is more gene flow among populations within geographic clusters (northern California, San Francisco Bay, Santa Cruz, San Luis Obispo and south) than previously believed to exist. They also found an association between tidewater goby presence and wet years. This information suggests that flooding may contribute to recolonization of sites from which gobies have temporarily disappeared.

Lagoons in which tidewater gobies are found range in size from a few square meters (yards) (less than 0.10 hectares (ha) (0.25 acres (ac)) of surface area to about 800 ha (2000 ac). Most lagoons with tidewater goby populations are in the range of 0.5–5 ha (1.25–12.5 ac). Surveys of tidewater goby localities and historical records indicate that size,

configuration, location, and access by humans are all related to persistence of populations of this species (Swift *et al.* 1989, 1994). Watered surface areas smaller than about 2 ha (5 ac) generally have histories of extinction, extirpation, or population reduction to very low levels, although some as small as 0.35 ha (0.86 ac) have been identified as having permanent tidewater goby populations (Swift *et al.* 1997, Lafferty 1997, Heasly *et al.* 1997). As evidenced by the Cañada Honda colonization (Swift *et al.* 1997), even relatively long distances are not obstacles to colonization or re-establishment. Many of the small lagoons with histories of intermittent populations are within 1–2 km (0.6–1.2 mi) of larger lagoons that can act as sources of colonizing gobies.

The largest localities have not proved to be the best for the species, as evidenced by the loss of tidewater gobies from San Francisco and Morro bays and the Santa Margarita River estuary. Today, the most stable and largest populations are in lagoons and estuaries of intermediate sizes, 2–50 ha (5–125 ac) that have remained relatively unaffected by human activities, although some systems that are heavily affected or altered also have large, stable populations (e.g., Santa Clara River, Ventura County; Santa Ynez River, Santa Barbara County; Pismo Creek, San Luis Obispo County). In many cases these probably have provided the colonists for the smaller ephemeral sites (Swift *et al.* 1997, Lafferty *et al.* in prep.).

**Distinct Population Segments**

We analyzed tidewater goby populations based on the joint National Marine Fisheries Service and U.S. Fish and Wildlife Service Policy Regarding the Recognition of Distinct Vertebrate Populations, published in the **Federal Register** on February 7, 1996 (61 FR 4722). We consider three elements in determining whether a vertebrate population segment could be treated as threatened or endangered under the Act: discreteness, significance, and conservation status in relation to the standards for listing. Discreteness refers to the isolation of a population from other members of the species and is based on two criteria: (1) Marked separation from other populations of the same taxon resulting from physical, physiological, ecological, or behavioral factors, including genetic discontinuity, or (2) populations delimited by international boundaries. We determine significance either by the importance or contribution, or both, of a discrete population to the species throughout its range. The policy lists four examples of factors that may be used to determine significance:

(1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon;

(2) Evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon;

(3) Evidence that the discrete population segment represents the only surviving natural occurrence of the taxon that may be more abundant elsewhere as an introduced population outside its historic range; and

(4) Evidence that the discrete population segment differs markedly from other populations of the taxon in its genetic characteristics.

If we determine that a population segment is discrete and significant, we evaluate it for endangered or threatened status based on the Act's standards.

The previously discussed electrophoretic and mitochondrial DNA analysis indicates the Orange and San Diego counties population is genetically discontinuous from other coastal populations of tidewater gobies. Furthermore, the significant distance (129 km, 80 mi) between the Orange and San Diego counties population and the closest extant population physically isolates these gobies from those populations to the north. Therefore, we conclude the Orange and San Diego counties population of tidewater gobies is discrete in accordance with our distinct vertebrate populations policy.

Genetic investigations (e.g., Jacobs *in litt.*, 1998) indicate that tidewater gobies are made up of four geographically distinct populations in California. Of these four, the southernmost, in Orange and San Diego counties, constitutes the most genetically divergent population. The genetic data reveal differences in the southern population that are consistent with interspecific boundaries in other species, and suggest divergence of the southern population from the rest of the populations over 100,000 years ago. This coincides with the fact that the southern population is the most geographically isolated, being 129 km (80 mi) from the nearest extant population. Loss of the Orange and San Diego counties population of tidewater gobies would result in a loss of a genetically unique tidewater goby population, and a reduction in range of tidewater gobies by approximately 129 km (80 mi). We therefore conclude that the Orange and San Diego counties population is significant in accordance with our distinct vertebrate populations policy. This population constitutes a distinct population segment, and we have evaluated it for endangered or threatened status based on the Act's standards.

**Previous Federal Actions**

We first classified the tidewater goby as a category 2 species in 1982 (47 FR 58454). We reclassified it as a category 1 candidate in 1991 (56 FR 58804) based on status and threat information in Swift *et al.* (1989). Category 2 applied to taxa for which information we possessed indicated that proposing to list as endangered or threatened was possibly appropriate, but for which conclusive data on biological vulnerability and threats were not currently available to support a listing proposal. Category 1 species, now referred to as candidate species, applies to taxa for which we have on file substantial information on biological vulnerability and threats to support a proposal to list as threatened or endangered. On October 24, 1990, we received a petition from Dr. Camm Swift, Associate Curator of Fishes at the Los Angeles Museum of Natural History, to list the tidewater goby as endangered. We published a finding that the requested action may be warranted on March 22, 1991. We published a proposal to list the tidewater goby as an endangered species on December 11, 1992 (57 FR 58770). On March 7, 1994, we listed tidewater goby as a federally endangered species (59 FR 5494). No critical habitat was designated.

Federal involvement with the tidewater goby following listing has included consultations under section 7 of the Act, permitting of breaching and other activities in lagoons through the section 404 process by the U.S. Army Corps of Engineers (ACOE), and funding and conducting research and surveys. Measures to reduce impacts to tidewater goby habitat and reduce or eliminate the potential for take of individuals have included adjusting the timing of projects to avoid disruption to breeding activities, the use of silt fencing to reduce sediment loads and as barricades around project sites, installing coffer dams above and below project sites and removal and translocation of animals found within the exclosures prior to necessary dewatering of project sites, minimization of project area, and requiring qualified biologists to oversee all activities.

**Tidewater Goby Status Review**

At the time of listing (1994), California had recently experienced 5 years of drought conditions (1987–1991), and we believed that most populations throughout the species' range were threatened by one or more factors, including modification and loss

of habitat as a result of coastal development, channelization of habitat, diversion and alteration of water flows, groundwater overdrafting, discharge of agricultural and sewage effluents, introduction of exotic fish species (particularly centrarchid species), and increased sedimentation due to cattle grazing and feral pig activity (59 FR 5494). We have assembled and evaluated new information regarding habitat status, habitat requirements of the goby, critical life history needs, dispersal processes and goby population status during drought and wet years. In the remainder of this section and in the Summary of Factors Affecting this Species, we review this new information and reassess the threats to the tidewater goby.

At the time of listing, we believed that the number of extant tidewater goby populations was 46, with 87 known historically. Since the listing, 4 populations once believed permanently extirpated have been rediscovered, 2 populations have been re-established artificially (Waddell Creek, Malibu Creek), records for at least 15 populations indicate that they are naturally intermittent, 11 populations believed extinct due to drought conditions have re-established naturally, and 20 new populations have been found. At present the number of extant populations is believed to be about 85, and the number of historical populations about 110.

In the early 1990s, the number of tidewater goby populations believed to be extinct caused concern, especially considering the high proportion believed lost in the southern third of the species' range. The final rule for the listing of the tidewater goby stated that 74 percent of the populations in coastal lagoons south of Morro Bay had been extirpated, with only 3 populations remaining south of Ventura County. We now know of 6 populations south of Ventura County, and only about 20 percent of populations south of Morro Bay are currently considered extirpated. Range-wide, of the 25 populations currently considered permanently extirpated, 19 were extirpated prior to 1970, before regulations protecting the environment were promulgated. The six more recent population extirpations are discussed in the appropriate sections below.

**Summary of Factors Affecting the Species**

Section 4 of the Endangered Species Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act, set forth the procedures for listing, reclassifying, and delisting species on Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). A species may be delisted, according to section 4 regulations (50 CFR Part 424.11(d)), if the best scientific and commercial data available substantiate that the species is neither endangered nor threatened because of (1) extinction, (2) recovery, or (3) original data for classification of the species were in error.

In the case of the tidewater goby, a significant number of populations previously believed extirpated have recolonized naturally, and a significant number of populations previously believed to be in decline have stabilized or increased in size since the listing. Therefore, we reevaluated all of the factors believed to be threatening the existence of the tidewater goby. We found that some of our interpretations of the data available when the species was listed were in error, and we also found that new information exists which supports interpretations of status and threats that differ from those presented in the final listing rule. After a thorough review of all available information, including considerable new information, we have determined that, north of Orange and San Diego counties, the tidewater goby is not endangered or threatened with endangerment. In this part of the range we now know that there are more populations than were known at the time of the listing, that the threats to those populations are less severe than previously believed, and that the tidewater goby has a marked ability to recolonize habitats from which it is temporarily absent. The 1994 final rule identified several threats to the tidewater goby, including coastal development, upstream water diversions and alteration of flows, groundwater overdrafting, discharge of agricultural and sewage effluents, channelization, cattle grazing, feral pig activity, predation by introduced fish species, inadequacy of existing regulatory mechanisms, drought, flood events and competition with introduced species. A reanalysis of these threats follows.

The remaining tidewater gobies in Orange and San Diego counties, which constitute a distinct population segment, are limited to the U.S. Marine Corps Base, Camp Pendleton. Threats to these southernmost tidewater goby populations differ from those found elsewhere on the California coast or, due to the small number of populations or other factors, threats that are minor to the northern populations of gobies are greatly exacerbated in the south. Urban development, although possibly impacting recovery areas, is not an overriding threat on Camp Pendleton. Nevertheless, habitat loss and degradation have occurred frequently and continue to threaten this population segment, as do predation by and competition with introduced species. These factors are discussed below for both the populations north of Orange and San Diego counties and the population within Orange and San Diego counties.

*A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

*Populations North of Orange and San Diego Counties.* Coastal development projects that result in the loss of coastal saltmarsh habitat were identified in the final rule as the major threat adversely affecting the tidewater goby. Such projects probably were the most significant threat responsible for the historical loss of tidewater goby populations. Projects included dredging of waterways for navigation and harbors and road construction that severed the connections of marshes with the Pacific Ocean. Reevaluation of the number of extirpations resulting from coastal development and habitat modification and loss shows that the potential for the substantial habitat loss and modification that occurred historically has been reduced substantially. This is due largely to the implementation of key environmental regulations required by the Clean Water Act, Coastal Zone Management Act and related California environmental statutes. For example, only five permanent extirpations resulting from destruction or modification of habitat have occurred since the initial promulgation of environmental regulations during the early 1970s (two due to construction of golf courses, one due to installment of culverts that altered natural lagoon dynamics, one due to placement of riprap cutting off ocean access, and one due to water appropriations). Thus, in the northern part of the species' range (i.e., north of Orange and San Diego counties) there is insufficient evidence to suggest that destruction and modification of habitat from coastal development are occurring at levels that constitute a substantial threat to the continued existence of the northern populations of tidewater gobies.

We stated in the final rule that upstream water diversions and groundwater overdrafting may adversely affect the tidewater goby by altering downstream flows, thereby diminishing the extent of marsh habitats that occurred historically at the mouths of

most rivers and creeks and potentially affecting the species' breeding and foraging activities. The final rule also suggested that alterations of flows upstream of coastal lagoons resulting in changes in downstream salinity regimes might affect the tidewater goby due to its presumed narrow salinity tolerances. Supporting these arguments at the time of the listing, the population in San Antonio Creek, Santa Barbara County, was believed to have been extirpated due to groundwater overdrafting. However, gobies are not currently extirpated from this location; they were found there in 1995.

Tidewater gobies have been collected from waters ranging from 0 to 42 ppt salinity (Swift *et al.* 1989, Lafferty and Alstatt 1995). During the late 1980s and early 1990s, Worcester (1992) conducted an investigation of habitat use in Pico Creek lagoon, and observed large numbers of tidewater gobies using the lower portion of the lagoon where high salinities (up to 27 ppt) were documented. Since the listing, Swenson (1995) and Swift *et al.* (1997) have reported capturing gobies in waters up to 28 ppt and 32 ppt salinity, respectively. Two salinity tolerance experiments discussed in Swift *et al.* (1989) indicate that tidewater gobies can withstand a wide range of salinities, from 0–40 ppt for up to 25 days with 20 percent or less mortality, even when moved directly from low salinity environments into high. A third experiment allowed salinities to increase through evaporation for 53 days. At a final salinity of 25 ppt, 75 percent of the tidewater gobies survived, while 59 percent of those held in water reaching a final salinity of 62 ppt survived. In the early 1990s, while tidewater gobies were held at the Granite Canyon Fish Culture Facility, a salinity tolerance test was conducted in hypersaline water (45–54 ppt) for 6 months, with no mortality. In addition, tidewater gobies were maintained in fresh water and salinities of 10–15 ppt, 20 ppt, and normal sea water (about 33 ppt salinity). Reproduction took place in all four regimes. Some of the laboratory bred tidewater gobies spawned when they matured (K. R. Worcester, *in litt.* 1996; Worcester and Lea 1996). Based on these studies, the goby appears tolerant of a broad range of salinity conditions.

Channelization was identified as a threat in ''most'' of the habitats occupied by the species due to the scouring effects of high winter flows in the restricted channels and the lack of protective habitat. However, with the exception of the extirpation of the Waddell Creek, Santa Cruz County, population during the winter of 1972–73 attributed to channelization, further review of causes of extirpations since 1970 has not been able to identify population extirpation due to this threat. Moreover, tidewater gobies were re-established in Waddell Creek in 1991 and have persisted there through 1997 (Smith 1998).

Siltation from topsoil runoff and the increased sedimentation and habitat degradation associated with cattle grazing and feral pig activity were also identified as threats to the tidewater goby. Many tidewater goby populations exist in habitats where such agricultural effluent and runoff and wastewater effluent occur, and the final rule identified the resulting algal blooms and deoxygenation as possible factors in the further degradation of tidewater goby habitats. During the 1950s, sewage effluents high in ammonia were discharged into the Salinas River and are believed to have been a factor in the apparent extirpation of that tidewater goby population (Jerry J. Smith, Ph.D., San Jose State University, pers. comm. 1998). However, in many lagoons receiving agricultural and sewage effluents, tidewater gobies are the most abundant fish species present, as found during surveys of lagoons in Santa Barbara County (Ambrose *et al.* 1993). Field observations made during tidewater goby surveys have found extremely low levels of dissolved oxygen (0.2–1.7 mg/l) (Worcester1992, Swift *et al.* 1997) and elevated temperatures (greater than 30 degrees C) where gobies were found in high numbers (C. Chamberlain, pers. comm. 1996; E. Ballard, U.S. Fish and Wildlife Service, Sacramento, California, personal observation 1997). Based on those observations, the tidewater goby appears to be tolerant of agricultural and sewage effluents, and of a wide range of dissolved oxygen levels and temperatures.

We suggested in the final rule that only 6 to 8 of the 46 remaining populations were large enough and free enough from habitat degradation to be safe in the immediate future. The remaining lagoons were considered so small or modified that tidewater goby populations were thought to be restricted in distribution and vulnerable to extirpation. Of particular concern was the extirpation of smaller populations due to effects of drought exacerbated by upstream water diversions. The number of extirpated populations of gobies was believed to leave remaining populations so widely separated throughout most of the species' range that recolonization was unlikely. New information and analyses indicate that the tidewater goby is very well adapted to the climatically dynamic system within which it has evolved, and that the intermittent occupancy of some sites is a normal aspect of the species' biology (Swift *et al.* 1994, 1997; Lafferty *et al.* in prep.; J. Smith, pers. comm. 1998). Following the listing of the tidewater goby and the end of the 1987–1992 drought, at least 14 populations considered extirpated due to the drought and other causes were found to be extant. In some cases, these habitats were documented as being dry during the drought, with no gobies believed to be present in the drainages (e.g., Laguna and Moore creeks, Santa Cruz County; Arroyo del Puerto, San Luis Obispo County). Following a return to normal or above average rainfall, gobies were found not only in those 14 sites but also in approximately 20 others from which they previously had not been found. These findings show that recolonization is possible and indicate that it is a normal process following habitat variation due to climatic fluctuations (Swift *et al.* 1994, 1997; Lafferty *et al.* in prep.; J. Smith, pers. comm. 1998).

In a number of cases, surveys that concluded that populations were extirpated from localities that did not go dry during the drought apparently were inadequate to determine presence or absence of the species. Periodic disappearances and re-appearances of the tidewater goby in various locations during the last 25 years (Lafferty 1997, Lafferty *et al.* in prep.) suggest that conclusions regarding presence/absence based on standard survey methods may not be reliable. Researchers along the central California coast have observed periods when tidewater gobies cannot be found, but then later reappear (Rathbun *et al.* 1991; Swift *et al.* 1993, 1997; J. Smith, pers. comm. 1998). These observations may be the result of the gobies being temporarily absent from the sampled habitat or the population decreasing temporarily to a size not detectable by standard presence/absence methods (e.g., seine hauls). Regardless, the reappearance of tidewater gobies in localities where they previously were considered to be extirpated may be the result of earlier surveys being conducted during the windows of time when gobies temporarily were not observable (Smith 1998; Norm Scott, Ph.D., U.S. Geological Survey, Biological Resources Division, San Simeon, pers. comm. 1997). The continued survival of tidewater goby populations, both large and small, following the long drought of the late 1980s and early 1990s suggests that the previous assessment that most of the

populations are extremely vulnerable to extirpation is not valid.

Although not discussed in the final listing rule, artificial lagoon breaching during the dry season has been suggested as a potential threat to tidewater gobies. No data exist to substantiate the severity of this threat (but see the adverse effects of artificial breaching San Onofre Creek lagoon, below). Significant decreases in water level, exposure of tidewater goby breeding burrows and bottom habitat, and increased salinity resulting from breaching during the dry season are factors that we considered as possible threats to the persistence of tidewater goby populations. However, in the northern part of its range, the species continues to persist at numerous locations (e.g., Pescadero Creek, San Mateo County; Pismo Creek, San Luis Obispo County; Santa Ynez and Arroyo Burro, Santa Barbara County; Santa Clara River, Ventura County) where unseasonal breaching occurred on a regular basis prior to the listing (Swenson 1995; Lafferty 1995; Lafferty and Alstatt 1995; Heasly *et al.* 1997; D. W. Alley, *in litt.* 1998). The lack of any records of breaching-related extirpations leads us to conclude that breaching does not pose a significant threat to the northern populations of the species.

*Orange and San Diego Counties Population.* Of the 13 historic and current sites in Orange and San Diego counties, the two northernmost, Aliso and San Juan creeks in Orange County were lost in the 1980s and 1960s (respectively). The three southernmost sites, San Luis Rey, Buena Vista, and Agua Hedionda were lost in the 1940s and 1950s. More recently, it appears that Santa Margarita River, which probably was habitat for a naturally intermittent population (see Lafferty 1997, Lafferty *et al.* in prep.), is now permanently unsuitable due to exotic species and hydrologic changes. Permanent population losses, such as those listed above, can seriously influence metapopulation dynamics in the region, leading to larger scale extinctions, by reducing opportunities for recolonization of suitable sites. Exacerbating this concern, recent human activities have further endangered the two largest goby populations in Orange and San Diego counties (San Onofre Creek Lagoon, San Mateo Creek Lagoon) which may be important sources of dispersing gobies that repopulate other areas when they are periodically lost.

In October 1996, a survey conducted by Drs. Dan Holland and Camm Swift in the San Onofre Creek lagoon estimated the population of gobies at 12,265. On November 22, 1996, the lagoon was artificially breached and water immediately began draining from the lagoon into the ocean. The water level dropped 40 to 50 cm and the surface area of the lagoon decreased approximately 60 to 75 percent during the next 12 hours. During the night of November 22–23, 1996, the bar across the mouth of the lagoon reformed and water ceased to flow directly into the Pacific Ocean. On November 24, 1996, Drs. Holland and Swift resurveyed the lagoon and estimated the goby population at 5,345, a decrease of 6,920 fish from their October 1996 survey (Swift and Holland 1998). Recent surveys confirm that tidewater gobies are still present in San Onofre Creek Lagoon but no precise population estimates are available.

On February 24, 1998, repair work began on storm-damaged railroad trestles that traverse San Mateo Creek Lagoon. This work included dredging portions of the creek and lagoon, and filling fresh water marsh which function as goby refugia. The San Mateo goby population at this locality was estimated at approximately 70,000 in 1996 (Swift and Holland 1998). After the dredging and filling, several surveys were conducted and no gobies were detected, but they were found at Las Flores, Cockleburr, and Hidden lagoons. The trestle repair work coupled with the winter storms may have resulted in the extirpation of the goby at San Mateo Creek. The consequences of population losses or elimination of the San Mateo and San Onofre populations, which had appeared to be two of the three most stable in the area, are very serious because the effects could extend to other areas, contributing, for example, to long term or permanent extirpation of the remaining intermittent populations in the region (Hidden, Aliso, French and Cockleburr creeks).

These examples described above illustrate serious adverse population responses to earthmoving activities in and around creeks and lagoons. The specific mechanism or mechanisms (e.g., changed hydrological regime, siltation, water quality) leading to population declines are not known, and it is also not known if gobies in the Orange and San Diego counties distinct population segment respond differently to environmental stresses than gobies to the north. Tidewater gobies from Orange and San Diego counties are genetically distinct and live in a very different physical and biotic environment from those in more northerly habitats. It is possible that in this part of the range, environmental stresses such as siltation or changed hydrology affect gobies more severely than the same stresses to the north. Or, environmental factors unique to southern California or combinations of factors of which we are now currently unaware may be leading to declines in disturbed areas occupied by Orange and San Diego counties populations. Whatever the mechanisms, the recent loss or serious reduction of the Santa Margarita River and San Onofre and San Mateo lagoon populations, all of which have experienced human-caused changes in hydrologic regime and earthmoving activities, suggests that, in this part of the range, this kind of disturbance has serious negative consequences for tidewater gobies. Depending on the alternative alignment selected, the proposed Foothill Transportation Corridor-South project could result in population effects similar to those described above.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

*Populations North of Orange and San Diego Counties.* Overutilization is not known to be applicable; there is no change in this factor since the species was listed in 1994.

*Orange and San Diego Counties Population.* Same as above.

*C. Disease or Predation*

*Populations North of Orange and San Diego Counties.* Disease was not identified as a threat in the final listing rule, nor is it known to be a threat at this time. Swenson (1995) reported finding cysts, presumably of the digenean trematode (a flatworm or fluke (*Cryptocotyle lingua*), and felt that the fluke could have been a factor in the apparent population decline of tidewater gobies in Pescadero Lagoon in 1992 and 1993. However, gobies have persisted in the lagoon and associated creek and marsh, at least through 1996 (J. Smith, pers. comm. 1998). The fluke species also has been reported from fish in Corcoran (Rodeo) Lagoon in Santa Cruz County (Swift *et al.* 1989), but there is no indication of consequences for the tidewater goby population there.

A large number of exotic species that have been perceived as threats to the tidewater goby have been introduced into goby habitats. In the final rule, the introduction of striped bass into the San Francisco delta area was hypothesized to have caused the loss of tidewater gobies in that habitat. However, no historic data exist to test this hypothesis. As discussed in the background section, predation by and competition with the introduced yellowfin, chameleon, and shimofuri gobies exists. However, tidewater goby

populations north of Orange and San Diego counties are not particularly vulnerable to these introduced fish. The centrarchid species largemouth bass and green sunfish (*Lepomis cyanellus*) were identified in the final listing rule as having caused the loss of at least two populations. However, centrarchids are known to exist in many sites inhabited by large populations of tidewater gobies (e.g., Santa Clara River, Las Pulgas Creek, San Mateo Creek). Because of the range of salinity tolerances of the tidewater goby and the more limited salinity tolerances of many exotic species, and because tidewater goby populations are sufficiently large and can repopulate from adjacent streams, the threat of tidewater goby extirpation throughout its habitat as a result of predation by exotic species appears minimal. While exotic species forage on tidewater gobies, the current suite of exotic fishes are not likely a serious threat to populations north of Orange County at this time. Although African clawed frogs feed on tidewater gobies (Lafferty and Page 1997), gobies are found in large numbers in at least one habitat (Santa Clara River) occupied by the frogs.

*Orange and San Diego Counties Population.* As described under Factor A, above, it is not known if tidewater gobies in Orange and San Diego counties respond differently to environmental stresses than gobies to the north. Exotic fishes are thought to have played an important role in population losses or declines in San Onofre Creek and the Santa Margarita River. The predatory yellowfin goby, native to the inshore marine waters of Japan and China, is established in most lagoons that have or had gobies in Orange and San Diego counties. This and other exotic species may or may not by themselves extirpate tidewater gobies in Orange and San Diego counties, but when combined with other factors, especially habitat disturbance (see Factor A, above), may pose a serious ongoing threat to the Orange and San Diego counties distinct population segment. In addition, only six populations remain and two of the formerly largest have been seriously imperiled recently by human activities (see Factor A, above). Therefore, threats such as exotic predators, that prevent or contribute to significant reductions in dispersal and recolonization of sites where gobies are temporarily absent, could lead to the extinction of the entire Orange and San Diego distinct population segment.

*D. The Inadequacy of Existing Regulatory Mechanisms*

*Populations North of Orange and San Diego Counties.* Inadequacies of existing regulatory mechanisms were cited in the final listing rule as a factor leading to the listing. This factor undoubtably contributed to the loss of populations prior to the promulgation of environmental regulations *circa* 1970. Currently, the review and permitting of projects conducted by the ACOE under section 10 of the Rivers and Harbors Appropriation Act of 1899 and section 404 of the Clean Water Act (CWA) are unlikely to allow the extent of destruction and modification of tidewater goby habitat that occurred prior to the implementation of these regulations. Measures are often included as standard measures in section 404 permits because other listed and sensitive species (e.g., California red-legged frog (*Rana aurora draytoni*), steelhead trout (*Oncorhynchus mykiss*), unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*)) often occur in the same locations as tidewater gobies. Examples of these measures include eliminating or reducing siltation by silt fencing along project sites and access roads, preventing sensitive species from entering project areas, erecting coffer dams on either side of project sites, and timing project activities to reduce impacts during the breeding season. Little evidence exists to support the conclusion that existing regulatory mechanisms inadequately protect the species or are contributing to substantial or widespread population decline and loss in the northern portion of the species' range (see Factor A, above).

Current regulations require that a project that may alter wetland habitat be reviewed by and permitted through the ACOE and the California Coastal Commission (CCC). During the review of projects, avoidance of impacts (i.e., the prevention of habitat degradation including that occupied by listed species) is the first consideration. If wetlands will be altered, mitigation and/or compensation are required (40 CFR Part 230, CCC 1994). Section 404 of the CWA and the subsequent guidelines (40 CFR Part 230) for implementing that act govern the discharge of materials into waters of the United States in such a manner as to avoid or minimize impacts to (in part) human health and welfare; aquatic life and wildlife; aquatic system diversity, and productivity and stability; and they prohibit violation of state water quality standards, Environmental Protection Agency toxic effluent standards, the Act, and the Marine Protection, Research and Sanctuaries Act. Projects within the California coastal zone come under the provisions of the Federal Coastal Zone Management Act of 1990, and must go through an environmental review process. As with projects falling under section 404 of the CWA, the priorities are to avoid impacts, to mitigate if impacts are unavoidable, and to provide compensation if mitigation is infeasible (CCC 1994).

In most cases, current regulations generally do not require minimal freshwater inflows into lagoons and estuaries in California. However, in many cases, water inflows during the dry season probably are higher than occurred historically due to wastewater treatment plant discharge and urban and agricultural runoff. Although discharge of such effluents was identified as an adverse factor in the final listing rule, and the effects of such effluents have not been studied directly, many of the habitats where such dry season inflows occur (e.g., Santa Ynez Lagoon, Ventura Lagoon, Santa Clara Lagoon) support large populations of tidewater gobies. A review of the Environmental Protection Agency's on-line database AQUIRE found no contaminant data directly relating to tidewater gobies. No published research has addressed contaminant concentrations or effects in the tidewater goby. Little evidence exists to support the conclusion that water diversions, groundwater overdrafting and modifications in salinity regimes, or the discharge of effluents are posing a significant threat to the ongoing existence of the goby in the northern portion of its range, especially in today's regulatory environment. Of the five populations extirpated due to habitat destruction and modification since 1970, only the loss of the Upper Morro Bay population possibly can be attributed to water appropriation.

*Orange and San Diego Counties Population.* Despite the fact that the previously cited regulatory mechanisms were in place, three of the largest populations of tidewater goby (e.g., Santa Margarita River, and San Onofre and San Mateo creeks) have been lost or nearly lost since 1993. The populations in San Onofre and San Mateo creeks were lost or greatly diminished following single human-caused events occurring so rapidly that existing regulatory processes failed to protect the gobies. The small number (6) of extant populations in the Orange and San Diego counties distinct population segment makes the loss of any one population a greater cause for concern than in the northern portion of the

range. With fewer extant populations, the likelihood of recolonization of temporarily empty habitat is reduced, and the risk that all populations will be extirpated due to drought or human factors is greater.

*E. Other Natural or Manmade Factors Affecting Its Continued Existence*

*Populations North of Orange and San Diego Counties.* The deterioration of coastal and riparian habitats mostly resulting from drought was cited as the most significant natural factor adversely affecting the tidewater goby in the final rule. At the time of listing, California had experienced over 5 consecutive years of lower than average rainfall. The stressful conditions brought on by the drought were considered to be exacerbated by human-induced water reductions (i.e., diversions of water from streams, excessive groundwater withdrawals). The substantial increase in the numbers of populations apparently extirpated and in the rates of decline of other populations during the drought were the major impetus for listing the species. However, since the end of the drought, 14 sites from which tidewater gobies were believed to have been extirpated have been recolonized. The recovery of nearly all populations and recolonization after the prolonged drought demonstrated that recovery and recolonization of habitats following natural events is probably a normal process for this species. No information exists to indicate that the natural processes are being significantly compromised by current regulatory mechanisms, habitat use, or natural events. The survival and recovery of these populations following a prolonged drought has alleviated the concern that drought exacerbated by human-induced water reductions will result in significant permanent population decline and loss.

The extent of habitat degradation and losses of the tidewater goby from weather related phenomena, cited as threats in the final listing rule, has been difficult to determine. However, flood events have been shown to have no significant adverse effect on tidewater goby populations. The flushing action of floods is probably the primary mechanism for colonization of other habitats along the coast (Lafferty *et al.* 1996, Swift *et al.* 1997).

Competition with introduced species also was identified as a potential threat in the final listing rule. The competing species of concern were the yellowfin goby and the chameleon goby. The shimofuri goby is also found in some tidewater goby sites, exhibits dietary overlap with the tidewater goby (Swenson 1995), and has been documented to prey on tidewater gobies in the laboratory (Swenson and Matern 1995). The significance of these interactions in the wild remains undocumented. To date no documented extirpation or population decline can be attributed directly to these or other introduced competing species. Lafferty and Page (1997) cite Brittan *et al.* (1970) and McGinnis (1984) as evidence that the introduction of the yellowfin goby into San Francisco Bay and the disappearance of tidewater gobies were correlated. However, Brittan *et al.* (1970) do not discuss the distribution of nor impacts on the tidewater goby. Lafferty and Page (1997) cited Hubbs and Miller (1965) as evidence that killifish also were involved in the loss of tidewater gobies from that region. However, Lafferty and Page (1997) note that yellowfin gobies, mosquitofish, and green sunfish coexist with tidewater gobies in at least one location, the Santa Clara River.

*Orange and San Diego Counties Population.* Historically, natural events such as high storm flows washed many fish, including tidewater gobies, out of lagoons. These events ultimately may have benefitted many native fishes, including tidewater gobies. High flows likely reduced populations of predators, and gobies soon recolonized the lagoons from adjacent populations. Unfortunately, the extirpation of many historic tidewater goby populations from adjacent watersheds requires the gobies to travel greater distances and from smaller source populations. As a result, this natural recolonization is much more difficult and uncertain.

Similarly, droughts may have temporarily reduced local tidewater goby populations, but they soon recovered during wet years. However, many of the larger tidewater goby populations in Orange and San Diego counties have already been lost, and therefore, recolonization of smaller intermittent lagoons following droughts appears much more unlikely. Extended droughts, coupled with other physical alterations to the lagoons threaten the tidewater goby in Orange and San Diego counties.

**Effects of the Rule**

Finalization of this rule will change the portion of the range of the tidewater goby listed as endangered from ''Entire'' to ''Orange and San Diego counties'' in the List of Endangered and Threatened Wildlife. Therefore, taking, interstate commerce, import and export of tidewater gobies occurring outside of Orange and San Diego counties will no longer be prohibited under the Act. In addition, Federal agencies will no longer need to consult with the Service to ensure that any action authorized, funded, or carried out by them is not likely to jeopardize the continued existence of the tidewater goby outside of Orange and San Diego counties.

The distinct population segment of the tidewater goby in Orange and San Diego counties will remain an endangered species on the List of Endangered and Threatened Wildlife. Federal agencies will need to continue to consult with the Service to ensure that any action authorized, funded, or carried out by them is not likely to jeopardize the continued existence of the Orange and San Diego counties population of tidewater goby.

**Future Conservation Measures**

Section 4(g) of the Act requires that all species that have been delisted due to recovery be monitored for at least 5 years following delisting. The tidewater goby populations north of Orange and San Diego counties are proposed for delisting primarily because there have been additional discoveries of tidewater goby populations since the original listing and more complete information is now available. A monitoring plan is not required for species delisted due to errors in or insufficiency of the data on which the classification was based, but we strongly encourage those parties involved in conducting surveys and monitoring programs for tidewater gobies to continue their efforts and forward the information to us.

**Public Comments Solicited**

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) Additional information concerning the range, distribution, and population size of this species; and

(3) Current or planned activities in the range of this species and their possible impacts on this species.

The final decision on this proposal for the tidewater goby will take into consideration the comments and any additional information we receive, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of this proposal. Such requests must be made in writing and addressed to the office listed in the **ADDRESSES** section (above).

**Required Determinations**

*Paperwork Reduction Act*

This rule does not include any collections of information that require approval by OMB under the Paperwork Reduction Act.

*National Environmental Policy Act*

We have determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

*References Cited*

A complete list of all references cited herein is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

*Authors*

The primary authors of this proposed rule are Ed Ballard and Grace McLaughlin, Ventura Fish and Wildlife Office (805/644–1766), and Paul Barrett, Carlsbad Fish and Wildlife Office (760/431–9440), U.S. Fish and Wildlife Service.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Proposed Regulation Promulgation**

Accordingly, we propose to amend part 17, subchapter B of Chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), we propose to amend the table by revising the entry for ''goby, tidewater'' under FISHES to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| * | * | * | * | * | * | * | |
| FISHES | | | | | | | |
| * | * | * | * | * | * | * | |
| Goby, tidewater ..... | Eucyclogobius newberryi. | U.S.A. (CA) ..... | Orange and San Diego Counties (U.S.A.-CA). | E | 527 | NA | NA |
| * | * | * | * | * | * | * | |

Dated: May 28, 1999.

**Jamie Rappaport Clark,**

*Director, Fish and Wildlife Service.*

[FR Doc. 99–16030 Filed 6–23–99; 8:45 am]

BILLING CODE 4310–55–P

# Notices

**Federal Register**

Vol. 64, No. 121

Thursday, June 24, 1999

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.

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Texas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Texas Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 2:00 p.m. on Friday, July 16, 1999, at the St. Anthony Hotel, Crockett Room, 300 East Travis, San Antonio, Texas 78205. The purpose of the meeting is to discuss the status of the Hopwood Project and civil rights issues in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 14, 1999.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 99–16099 Filed 6–23–99; 8:45 am]

BILLING CODE 6335–01–P

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–570–815]**

### Notice of Extension of Time Limit for Antidumping Duty Administrative Review of Sulfanilic Acid From the People's Republic of China

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

**EFFECTIVE DATE:** June 24, 1999.

**SUMMARY:** The Department of Commerce (the Department) is extending the time limit for the preliminary results of the antidumping duty administrative review of the antidumping order on sulfanilic acid from the People's Republic of China, covering the period August 1, 1997 through July 31, 1998.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Lyons, Linda Smiroldo, or Nithya Nagarajan, AD/CVD Enforcement Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone (202) 482–0374, (202) 482–6412, or (202) 482–4243, respectively.

**SUPPLEMENTARY INFORMATION:** Under section 751(a)(3)(A) of the Tariff Act, as amended (the Act), the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 245 days after the last day of the anniversary month for the relevant order. In the instant case, the Department has determined that it is not practicable to complete the review within that statutory time limit. *See* Memorandum from Joseph A. Spetrini to Robert S. LaRussa, dated June 17, 1999. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the preliminary results until August 31, 1999. This extension fully extends the statutory deadline to 365 days after the last day of the anniversary month for the relevant order. The Department previously extended the time period for the preliminary results from May 3, 1999 to July 2, 1999. 64 FR 7168 (February 12, 1999).

Dated: June 17, 1999.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary, Enforcement Group III.*

[FR Doc. 99–16126 Filed 6–23–99; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 061599C]**

### Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Pacific Fishery Management Council's (Council) Ad-Hoc Marine Reserve Committee will hold a public meeting.

**DATES:** The meeting will begin on Monday, July 12 at 10 a.m., and will continue through 4 p.m. Tuesday, July 13. The Monday session may go into the evening until business for the day is completed. The Tuesday session will begin at 8 a.m.

**ADDRESSES:** The meeting will be held in the Council Conference Room, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

*Council address*: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

**FOR FURTHER INFORMATION CONTACT:** Jim Seger, Economic Analysis Coordinator; telephone: (503) 326–6352.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to develop design criteria for marine reserve options to be presented to the Council.

Although other issues not contained in this agenda may come before the committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues will not be the subject of action during this meeting. Action will be restricted to those issues specifically identified in this notice.

### Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr.

John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: June 17, 1999.

**Bruce C. Morehead,**

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

[FR Doc. 99–16086 Filed 6–23–99; 8:45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 061699D]**

### Endangered Species; Permits

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

**ACTION:** Receipt of applications for scientific research permits (1121, 1217); receipt of applications to modify scientific research permits (1075, 1167, 1213); issuance of scientific research and incidental take permits (1150, 1199, 1201, 1212, 1213); and modifications/amendments to existing scientific research and incidental take permits (1010, 1017, 1120).

**SUMMARY:** Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement:

NMFS has received permit applications from David Salsbery, Santa Clara Valley Water District in San Jose, CA (SCVWD) (1121) and Dr. Mark Stromberg, Hastings Natural History Reservation in Carmel Valley, CA (MS-HNHR) (1217); NMFS has received applications for modifications to existing permits from: Mr. Harry Vaughn, Pacific Coast Federation of Fisherman's Associations in Miranda, CA (PCFFA)(1075), Dr. Peter Moyle, of the University of California at Davis (PM-UCD) (1167), and NMFS Northwest Fisheries Science Center in Seattle, WA (NWFSC) (1213); NMFS has issued permits to: Idaho Department of Fish and Game at Boise, ID (IDFG) (1150), Mr. Gerry Davis, of Guam Department of Agriculture (GD-GDA)(1199), Dr. Thane Wibbels, of University of Alabama at Birmingham (TW-UAB)(1201), and NWFSC (1212 and 1213); and NMFS has issued modifications/amendments to scientific research permits to IDFG (1010 and 1120) and Oregon Department of Fish and Wildlife at Portland, OR (ODFW)(1017).

**DATES:** Written comments or requests for a public hearing on any of the new applications or modification requests must be received on or before July 26, 1999.

**ADDRESSES:** The applications and related documents are available for review in the following offices, by appointment:

For permits 1010, 1017, 1120, 1150, 1212, 1213: Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

For permits 1075, 1121, 1167, 1217: Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528 (707–575–6066).

For permits 1199, 1201: Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910 (301–713–1401).

**FOR FURTHER INFORMATION CONTACT:**

For permits 1199, 1201: Terri Jordan, Silver Spring, MD (301–713–1401).

For permits 1075, 1121, 1167, 1217: Dan Logan, Protected Resources Division, Santa Rosa, CA (707-575-6053).

For the permit 1213: Leslie Schaeffer, Portland, OR (503–230–5433).

For permits 1010, 1017, 1120, 1150, 1212: Robert Koch, Portland, OR (503–230–5424).

**SUPPLEMENTARY INFORMATION:**

#### Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

#### Species Covered in This Notice

The following species and evolutionarily significant units (ESU's) are covered in this notice:

*Sea Turtles*

Threatened Green turtle (*Chelonia mydas*), endangered Hawksbill turtle (*Eretmochelys imbricata*), endangered Kemp's ridley turtle (*Lepidochelys kempii*), threatened Loggerhead turtle (*Caretta caretta*).

*Fish*

Chinook salmon (*Oncorhynchus tshawytscha*): threatened Snake River (SnR) fall, threatened SnR spring/summer, endangered upper Columbia River (UCR) spring.

Coho salmon (*Oncorhynchus kisutch*): threatened Southern Oregon/Northern California coast (SONCC).

Cutthroat trout (*Oncorhynchus clarki clarki*): endangered Umpqua River UmR.

Sockeye salmon (*Oncorhynchus nerka*): endangered SnR.

Steelhead trout (*Oncorhynchus mykiss*): threatened Central Valley (CV), threatened Central California coast (CCC), threatened South-Central California coast (SCCC), endangered UCR.

To date, protective regulations for threatened CV, CCC, or SCCC steelhead under section 4(d) of the ESA have been not promulgated by NMFS. This notice of receipt of applications requesting takes of CV, CCC, and SCCC steelhead is issued as a precaution in the event that NMFS issues CV, CCC, or SCCC steelhead protective regulations. The initiation of a 30-day public comment period on the applications, including their proposed takes of CV, CCC, and SCCC steelhead, does not presuppose the contents of the eventual protective regulations.

#### New Applications Received

SCVWD (1121) requests a 5-year permit to authorize takes of adult and juvenile CCC and SCCC steelhead associated with population, habitat and migration studies within the ESUs. This research will provide a baseline of fish populations and help to determine the effects water management, mitigation and maintenance activities in Santa Clara County. Authorization to relocate steelhead as necessary for survival is also requested.

MS-HNHR (1217) requests a 5-year permit to authorize takes of adult and juvenile SCCC steelhead associated with sampling conducted for genetic studies in the upper Carmel, San Jose, Little Sur, Big Sur and Big Creek drainage systems. The research will provide information useful in determining

genetic relationships with respect to geographical distribution.

**Modification Requests Received**

PCFFA requests a modification to permit 1075 for authorization of an increase in take of juvenile SONCC coho salmon associated with fish population, migration and habitat studies in the Eel River Basin. The modification is requested to be valid for the duration of the permit, which expires on June 30, 2003.

PM-UCD requests a modification to permit 1167 to increase authorized takes of adult and juvenile CV steelhead associated with sampling and tagging activity during habitat and distribution studies in the lower Yuba River. The modification is requested to be valid for the duration of the permit, which expires on June 30, 2003.

NWFSC requests modifications to scientific research permit 1213. Permit 1213 authorizes direct takes of juvenile SnR sockeye salmon; juvenile, naturally produced and artificially propagated, SnR spring/summer chinook salmon; juvenile SnR fall chinook salmon; and adult and juvenile, naturally produced and artificially propagated, UCR steelhead associated with seven studies at hydropower dams on the Snake and Columbia Rivers in the Pacific Northwest. For the modification, NWFSC requests an increase in take of juvenile SnR sockeye salmon; juvenile SnR fall chinook salmon; juvenile, naturally produced and artificially propagated, SnR spring/summer chinook salmon; and juvenile, naturally produced and artificially propagated, UCR steelhead associated additional testing at McNary Dam under Study 4. The additional take is requested to (1) evaluate the performance of extended-length bar screens equipped with a newly designed perforated plate system, and (2) release fish tagged with sonic transmitters to support the U.S. Army Corps of Engineers' Turbine Survival Program. Under this program, juvenile hatchery steelhead will be gastrically implanted with sonic tags, released through special release pipes into a turbine intake at the dam, and tracked electronically. NWFSC also requests a take of juvenile, endangered, naturally produced and artificially propagated, UCR spring chinook salmon associated with the study. The modifications are requested to be valid for the duration of the permit, which expires on December 31, 1999.

**Permits, Modifications, and Amendments Issued**

Notice was published on July 14, 1998 (63 FR 37851), that an application had been filed by IDFG for a modification to scientific research/enhancement permit 1010. Permit 1010 authorizes IDFG annual direct takes of adult and juvenile, naturally produced, SnR spring/summer chinook salmon associated with a captive rearing program. Each year, IDFG collects no more than 25 percent of the ESA-listed juvenile fish from the West Fork Yankee Fork of the Salmon River, upper East Fork Salmon River, and Lemhi River in ID. The ESA-listed juvenile fish are reared in captivity until mature. For modification 2, IDFG is authorized annual releases of mature, radio-tagged, spring chinook salmon from the program into the fish's respective stream of origin for natural spawning. IDFG is also authorized to collect ESA-listed adult fish carcasses subsequent to spawning for inspection and the acquisition of tissue samples. In addition, IDFG is authorized the retention of ESA-listed adult fish from each population in the hatchery to initiate a captive spawning program, annual releases of eyed-eggs (in hatch boxes or artificial redds) and/or juveniles from the captive spawning program, and the retention of eggs in the hatchery as a ''safety net''. Further, IDFG is authorized annual incidental takes of ESA-listed species due to adult and juvenile fish releases from the captive rearing and spawning programs. Modification 2 to permit 1010 was issued to IDFG on May 20, 1999, and is valid for the duration of the permit, which expires on December 31, 2000.

On June 4, 1999, NMFS issued an amendment of ODFW's incidental take permit 1017. Permit 1017 authorizes ODFW an annual incidental take of resident, fluvial, and anadromous, Umpqua River cutthroat trout associated with the State of Oregon's recreational and commercial fisheries in the Umpqua River Basin. For the amendment, NMFS has extended permit 1017 for an additional year. Permit 1017 will now expire on September 30, 2000.

On April 20, 1999, NMFS issued an amendment of IDFG's scientific research/enhancement permit 1120. Permit 1120 authorizes IDFG annual direct takes of adult and juvenile SnR sockeye salmon associated with a captive broodstock program. Annual incidental takes of ESA-listed species associated with fish releases from IDFG's captive broodstock program are also authorized by permit 1120. For the amendment, IDFG is authorized an annual incidental take of UCR spring chinook salmon associated with fish releases from IDFG's SnR sockeye salmon captive broodstock program. The incidental take authorization covers effects and/or impacts that are likely to occur in the mainstem Columbia River migration corridor. The amendment is valid for the duration of the permit, which expires on December 31, 2002.

Notice was published on October 28, 1998 (63 FR 57664), that an application had been filed by IDFG for an incidental take permit. Permit 1150 was issued to IDFG on May 28, 1999, and authorizes incidental takes of SnR sockeye salmon; naturally produced and artificially propagated, SnR spring/summer chinook salmon; and SnR fall chinook salmon associated with implementation of the State of Idaho's sport-fishing programs. IDFG's sport-fishing programs include the following activities: (1) Resident sport-fishing in ESA-listed chinook and sockeye salmon ranges in Idaho under the IDFG General Fishing Regulations, including kokanee and trout fisheries in Redfish, Alturas, and Pettit Lakes; (2) chinook salmon sport-fishing in the Clearwater River, Little Salmon River, and South Fork Salmon River under the IDFG Anadromous Salmon Fishing Regulations; and (3) summer steelhead fishing program during the fall and spring seasons under the IDFG Steelhead Fishing Regulations. Permit 1150 expires on December 31, 1999.

Notice was published on February 19, 1999 (64 FR 8331), that GD-GDA had applied for a 5-year research permit to take green and hawksbill sea turtles, record biological data, and sample tissue and run DNA analysis according to NMFS sampling protocols. A few of the turtles will be satellite-tagged. The purpose of the research is to: a) Collect baseline population size structure (age and sex) and genetic information for sea turtles in and about Guam, b) survey Guam's beaches for sea turtle nesting activity for both species throughout the nesting period. Nesting turtle research is covered by a section 6 agreement with FWS. Permit 1199 was issued on June 15, 1999, and expires April 30, 2004.

Notice was published on March 25, 1999 (64 FR 14432), that TW-UAB had applied for a scientific research permit to evaluate the abundance, movements, and location of juvenile sea turtles in the estuaries of Alabama, to potentially identify specific foraging areas. The presence of juvenile sea turtles in estuaries represents a potential conflict for fisheries and coastal development. However, there is little information about this issue for the estuaries of Alabama. The information from this study is critical to developing a prudent management strategy which protects sea turtles while sustaining the productivity of the fisheries. The proposed research is a prerequisite to determining if the

estuaries of Alabama represent a developmental habitat for juvenile sea turtles. The applicant proposes to: 1) Identify potential foraging areas by conducting sampling surveys, and measuring and tagging all captured turtles, 2) Perform radio tracking on some of the turtles to determine short term movements, home range, and identify foraging areas, 3) Collect samples of fecal and stomach materials in order to identify and document the diets of juvenile turtles, 4) Collect blood samples to estimate of sex ratio. Permit 1201 was issued on June 11, 1999, and expires February 28, 2001.

Notice was published on March 25, 1999 (64 FR 14432), that an application had been filed by NWFSC for a scientific research permit. Permit 1212 was issued to NWFSC on May 26, 1999, and authorizes takes of juvenile SnR sockeye salmon; juvenile, naturally produced and artificially propagated, SnR spring/summer chinook salmon; juvenile SnR fall chinook salmon; and juvenile, naturally produced and artificially propagated, UCR steelhead associated with four studies at the hydropower dams on the Snake and Columbia Rivers in the Pacific Northwest. The goal of Study 1 is to provide up-to-date survival estimates of juvenile salmonids as they migrate past McNary Dam on the Columbia River. The goal of Study 2 is to evaluate the specific trouble areas in the juvenile fish bypass system at Lower Monumental Dam on the Snake River. The goal of Study 3 is to compare the performance of juvenile salmonids tagged with Sham radiotransmitters with juvenile salmonids tagged with passive integrated transponders (PIT) at Lower Granite Dam on the Snake River. The goal of Study 4 is to determine tailrace residence times of radio-tagged hatchery chinook salmon under varying operational conditions at Lower Monumental Dam and to identify spill conditions that utilize the smallest volumes of water to maximize fish passage efficiency at Ice Harbor Dam on the Snake River. The research will provide information that will be used to develop corrective measures to improve juvenile fish passage at the dams. Permit 1212 expires on December 31, 2003.

Notice was published on March 25, 1999 (64 FR 14432), that an application had been filed by NWFSC for a scientific research permit. Permit 1213 was issued to NWFSC on June 3, 1999, and authorizes direct takes of juvenile SnR sockeye salmon; juvenile, naturally produced and artificially propagated, SnR spring/summer chinook salmon; juvenile SnR fall chinook salmon; and adult and juvenile, naturally produced and artificially propagated, UCR steelhead associated with seven studies at the hydropower dams on the Snake and Columbia Rivers in the Pacific Northwest. The goal of Study 1 is to evaluate the extended length bar screen at Little Goose Dam on the Snake River. The goal of Study 2 is to evaluate a prototype separator at Ice Harbor Dam. The goal of Study 3 is to establish biological design criteria for the fish passage facility at McNary Dam. The goal of Study 4 is to evaluate an orifice shelter, an outlet-flow control device, and methods of debris control at McNary Dam. The goal of Study 5 is to evaluate the modified extended-length bar screens at John Day Dam on the Columbia River. The goal of Study 6 is to evaluate the juvenile fish bypass system at John Day Dam. The goal of Study 7 is to evaluate the modified juvenile fish bypass system at the second powerhouse of Bonneville Dam on the Columbia River. The research will provide information that will be used to develop corrective measures to improve juvenile fish passage at the dams. Permit 1213 expires on December 31, 1999.

Dated: June 18, 1999.

**Wanda L. Cain,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 99–16084 Filed 6–23–99; 8:45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 060299A]**

### Marine Mammals; File No. 732–1587

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

**ACTION:** Issuance of permit.

**SUMMARY:** Notice is hereby given that Paul Ponganis, M.D., Ph.D., Associate Research Physiologist, Center for Marine Biotechnology and Biomedicine, Scripps Institute of Oceanography, La Jolla, CA 92093–0204, has been issued a permit to obtain elephant seals, harbor seals and California sea lions from rehabilitated stock for scientific research purposes.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Southwest Region, NMFS, 501 West Ocean Blvd., Long Beach, CA 90802–4213 (562/980–4001).

**FOR FURTHER INFORMATION CONTACT:** Ruth Johnson or Sara Shapiro, 301/713–2289.

**SUPPLEMENTARY INFORMATION:** On March 16, 1999, notice was published in the **Federal Register** (64 FR 13004) that a request for a scientific research permit to take pinnipeds had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: June 18, 1999.

**Ann D. Terbush,**

*Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 99–16087 Filed 6–23–99; 8:45 am]

BILLING CODE 3510–22–F

## COMMODITY FUTURES TRADING COMMISSION

### Privacy Act of 1974; Systems of Records; Annual Publication

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Publication of annual notice of the existence and character of each system of records that the Commodity Futures Trading Commission (''Commission'') maintains which contains information about individuals.

**SUMMARY:** The purpose of this notice is to announce the existence and character of the systems of records of the Commodity Futures Trading Commission as required by the Privacy Act of 1974, Pub. L. 93–579, 5 U.S.C. 552a.

Pursuant to 5 U.S.C. 552a(f), the Commission, on August 8, 1975, promulgated rules relating to records maintained by the Commission concerning individuals (40 FR 41056). The rules as amended (17 CFR part 146) address an individual's rights to know what information the Commission has in its files concerning the individual; to have access to those records; to petition the Commission to have inaccurate or incomplete records amended or corrected; and not to have personal information disseminated to unauthorized persons. The full text of the Commission's rules implementing the Privacy Act can be found in 17 CFR part 146.

Under 17 CFR 146.11(a), the Commission is required to publish annually a notice of the existence and character of each system of records it maintains which contains information about individuals. This notice implements this requirement and, when read together with the Commission's rules, will provide individuals with the information that they need to exercise fully their rights under the Privacy Act.

**FOR FURTHER INFORMATION CONTACT:** Edward W. Colbert, Assistant Secretary to the Commission, Freedom of Information Act, Privacy Act and Government in the Sunshine Act Compliance Office, (202) 418–5105, or Stacy Dean Yochum, Counsel to the Executive Director, (202) 418–5157, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

**SUPPLEMENTARY INFORMATION:**

**Content of Systems Notices**

Each of the notices contains the following information:

1. The name of the system;
2. The location of the system;
3. The categories of individuals on whom records are maintained in the system;
4. The categories of records maintained in the system;
5. The authority for maintaining the system;
6. The routine uses of records maintained in the system; including the categories of users and the purposes of such uses;
7. The policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system;
8. The title and business address of the system manager, the agency official who is responsible for the system of records;
9. The agency procedures by which an individual can find out whether the system of records contains a record pertaining to him, how he may gain access to any record pertaining to him contained in the system of records, and how he can contest the content of the records; and
10. The categories of sources of records in the system.

The following four systems of records have been exempted, as set forth in the descriptions of these systems of records, from certain requirements of the Privacy Act, as authorized under 5 U.S.C. 552a(k):

CFTC–9 Confidential information obtained during employee background investigations.

CFTC–10 Investigatory materials compiled for law enforcement purposes.

CFTC–31 Information pertaining to individuals discussed as closed Commission meetings.

CFTC–32 Investigatory materials compiled by the Office of the Inspector General.

**The Location of Systems of Records**

The Commission offices are in the following locations:

- Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, Telephone: (202) 418–5000;
- 300 Riverside Plaza, Suite 1600 North, Chicago, Illinois 60606, Telephone: (312) 353–5990;
- 4900 Main Street, Suite 721, Kansas City, Missouri 64112, Telephone: (816) 931–7600;
- One World Trade Center, Suite 3747, New York, New York 10048, Telephone: (212) 466–2061;
- Murdock Plaza, 10900 Wilshire Blvd, Suite 400, Los Angeles, California 90024, Telephone: (310) 235–6783; and
- 510 Grain Exchange Building, Minneapolis, Minnesota 55415, Telephone: (612) 370–3255.

Where a system of records is stored in multiple locations, the notice merely identifies the offices and refers to this introductory section for each address. The Commission's headquarters office is in Washington, DC, and is referred to in the systems notice as the ''principal office.'' The Commission maintains regional offices in Chicago and New York and smaller offices in Kansas City, Minneapolis and Los Angeles. For purposes of this notice, the regional offices and smaller offices are referred to collectively as the ''regional offices,'' ''All CFTC offices'' means the headquarters office, the regional offices and the smaller offices.

In many cases, records within a system are not available at each of the offices listed in the system notice. For example, case files are basically maintained in the office where the investigation is conducted, but certain information may be maintained in other offices as well. It is the Commission's responsibility, unless otherwise specified in the system notice, to determine where the particular records being sought are located. However, if the individual seeking the records in fact knows the location, it would be helpful to the Commission if the requester would indicate that location.

**Scope and Content of Systems of Records**

The Privacy Act applies to personal information about individuals. Personal information subject to the provisions of the Privacy Act may sometimes be found in a system of records that might appear to relate solely to commercial matters. For example, the system of records concerning registration of the various categories of registrants (CFTC–20) contains primarily business information. However, a firm's application for registration contains a few items of personal information concerning key personnel. Since the capability exists through the National Futures Association's computer system to retrieve information from this system of records not only by use of the name of the firm but also by the use of the name of these individuals, this information is within the purview of the Privacy Act. See the definition of system of records in the Privacy Act, 5 U.S.C. 552(a)(5), and § 146.2(g) of the commission's Privacy Act rules, 17 CFR 146.2(g).

Such a capability would generally not exist, however, in a Commission staff investigation of the activities of a firm unless an individual is registered as an FCM, IB, CTA or CPO. That is, if the investigation was opened under the name of the FCM, information would be retrievable only under that name. Accordingly, information about principals of a firm under investigation that might be developed during the investigation would generally not be retrievable by the name of the individual, and the provisions of the Privacy Act would not apply.

**General Statement of Routine Uses**

A principal purpose of the Privacy Act is to restrict the unauthorized dissemination of personal information concerning an individual. In this connection, the Privacy Act and the Commission's rules prohibit dissemination except for specific purposes. Individuals should refer to the full text of the Privacy Act, 5 U.S.C. 552a(b), and to the Commission's rules, 17 CFR part 146, for a complete list of authorized disclosures. Only those arising most frequently have been mentioned herein.

The Privacy Act and the Commission's rules specifically provide that disclosure may be made with the written consent of the individual to whom the record pertains. Disclosure may also be made to those officers and employees of the Commission who need the record in the performance of their duties. In addition, disclosures are authorized if they are made pursuant to the terms of the Freedom of Information Act, 5 U.S.C. 552.

In addition, the Privacy Act and the Commission's rules permit disclosure of individual records if it is for a ''routine use,'' which is defined as a use of a record that is compatible with the

purpose for which it was collected. Unless otherwise indicated, the following routine uses of Commission records are applicable to all CFTC systems. To avoid unnecessary repetition of these routine uses, where they are generally applicable, the system notice refers the reader to the ''General State of Routine Uses.'' The notice for each system of records lists any specific routine uses that are applicable to that system.

1. The information may be used by the Commission in any administrative proceeding before the Commission, in any injunctive action authorized under the Commodity Exchange Act or in any other action or proceeding in which the Commission or its staff participates as a party or the Commission participates as amicus curiae.

2. The information may be given to the Justice Department, the Securities and Exchange Commission, the United States Postal Service, the Internal Revenue Service, the Department of Agriculture, the Office of Personnel Management, and to other Federal, state or local law enforcement or regulatory agencies for use in meeting responsibilities assigned to them under the law, or made available to any member of Congress who is acting in his capacity as a member of Congress.

3. The information may be given to any board of trade designated as a contract market by the Commission if the Commission has reason to believe this will assist the contract market in carrying out its responsibilities under the Commodity Exchange Act, 7 U.S.C. 1, *et seq.*, and to any national securities exchange or national securities association registered with the Securities and Exchange Commission, to assist those organizations in carrying out their self-regulatory responsibilities under the Securities Exchange Act of 1935, 15 U.S.C. 78a, *et seq.*

4. At the discretion of the Commission staff, the information may be given or shown to anyone during the course of a Commission investigation if the staff has reason to believe that the person to whom it is disclosed may have further information about the matters discussed therein and those matters appear relevant to the subject of the investigation.

5. The information may be included in a public report issued by the Commission following an investigation, to the extent that this is authorized under Section 8 of the Commodity Exchange Act, 7 U.S.C. 12. Section 8 authorizes publication of such reports but contains restrictions on the publication of certain types of sensitive business developed during an investigation. In certain contexts, some of this information might be considered personal in nature.

6. The information may be disclosed to a Federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract or the issuance of a license, or a grant or other benefit by the requesting agency, to the extent that the information may be relevant to the requesting agency's decision on the matter.

7. The information may be disclosed to a prospective employer in response to its request in connection with the hiring or retention of an employees, to the extent that the information is believed to be relevant to the prospective employer's decision in the matter.

8. The information may be disclosed to any person, pursuant to Section 12(a) of the Commodity Exchange Act, 7 U.S.C. 16(a), when disclosure will further the policies of the Act or of other provisions of law. Section 12(a) authorizes the Commission to cooperate with various other government authorities or with ''any person.''

## System Notices

The Commission's systems of records are set forth below. For further information contact: Freedom of Information Act (FOIA), Privacy Act and Government in the Sunshine Act Compliance Staff, Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Fourth Floor, Washington, DC 20581, (202) 418–5105.

### Index



### CFTC–1

#### SYSTEM NAME:

Matter Register and Matter Indices.

#### SYSTEM LOCATION:

This system is located in the Division of Enforcement in the Commission's principal office and regional offices. See ''The Location of Systems of Records.''

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

a. Persons found or alleged to have, or suspected of having, violated the Commodity Exchange Act or the rules, regulations or orders of the Commission adopted thereunder.

b. Persons lodging complaints with the Commission.

c. Agency referrals.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

An index system to CFTC–10 Exempted Investigatory Records and CFTC–16 Enforcement Case Files, including:

a. The matter register. Records are organized by docket number and/or matter name. The register also indicates the date opened, the disposition and status, the date closed, and the staff member assigned.

b. The matter register also includes reports recommending openings and closings of investigations.

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

Section 8 of the commodity Exchange Act, 7 U.S.C. 12.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

See ''General Statement of Routine Uses.''

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

**STORAGE:**

Paper records in file folders, loose-leaf binders, computer files, and computer printouts.

**RETRIEVABILITY:**

By matter name or docket number.

**SAFEGUARDS:**

General building security. In appropriate cases, the records are maintained in lockable file cabinets. Computer files require password to access.

**RETENTION AND DISPOSAL:**

The records are destroyed when no longer needed.

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

Director, Division of Enforcement in the Commission's principal office and Regional Counsel in New York, Chicago and Los Angeles. See ''The Location of Systems of Records.''

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information about themselves or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone (202) 418–5105.

**RECORD SOURCE CATEGORIES:**

Persons submitting complaints to the Commission, and miscellaneous sources including customers, law enforcement and regulatory agencies, commodity exchanges, National Futures Association, trade sources, and Commission staff generated items.

## CFTC–2

**SYSTEM NAME:**

Correspondence Files.

**SYSTEM LOCATION:**

This system is located in the Commission's principal offices at Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

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

Persons corresponding with the Commission, directly or through their representatives. Persons discussed in correspondence to or from the Commission.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Incoming and outgoing correspondence and indices of correspondence, and certain internal reports and memoranda related to the correspondence. This system includes only those records that are part of a general correspondence file maintained by the office involved. It includes correspondence indexed by subject matter, date or assigned number and, in certain offices, by individual name of the correspondent.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

44 U.S.C. 3101.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

See ''General Statement of Routine Uses.''

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

**STORAGE:**

Paper records in file folders, in loose-leaf binders, or index cards, computer files and printouts, and related indices on magnetic disk.

**RETRIEVABILITY:**

By name of correspondent, subject matter, date or assigned number. The name may be either the name of the person who sent or received the letter, or the person on whose behalf the letter was sent or received. It may also be another person who was the principal subject of the letter, where circumstances appear to justify this treatment. See previous discussion concerning the category of records maintained in this system.

**SAFEGUARDS:**

Secured rooms or on secured premises with access limited to those whose official duties require access.

**RETENTION AND DISPOSAL:**

Maintained indefinitely depending on the policies and practices of the offices involved.

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

Office of the Secretariat; Director, Office of Public Affairs; Director, Office of Legislative and Intergovernmental Affairs; Executive Director; General Counsel; Director, Division of Enforcement; Director; Division of Trading and Markets; and, Director, Division of Economic Analysis. All are located at the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone (202) 518–5105. Specify the system manager, if known.

**RECORD SOURCE CATEGORIES:**

Persons corresponding with the Commission and correspondence and memoranda prepared by the Commission.

## CFTC–3

**SYSTEM NAME:**

Docket Files.

**SYSTEM LOCATION:**

This system is located in the Office of Proceedings, Proceedings Clerk's Office, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

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

All persons involved in any CFTC proceeding.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

All pleadings, motions, applications, stipulations, affidavits, transcripts and documents introduced as evidence, briefs, orders, findings, opinions, and other matters that are part of the record of an administrative or reparations proceeding. They also include related correspondence and indices.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

The Commission is authorized or required to conduct hearings under several provisions of the Commodity Exchange Act. These files are a necessary concomitant for the conduct of orderly hearings. See also 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are public records unless the Commission or assigned presiding officer determines for good cause to treat them as nonpublic records consistent with the provisions of the Freedom of Information Act. Nonpublic portions may be used for any purpose specifically authorized by the Commission or by the presiding officer who ordered such nonpublic treatment of the records.

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

STORAGE:

Paper records in file folders, computer files, computer printouts, index cards, and microfiche.

RETRIEVABILITY:

By the docket number and cross-indexed by complainant and respondent names.

SAFEGUARDS:

Only items that the Commission or the presiding officer has directed be kept nonpublic are segregated. Precautions are taken as to these items to assure that access is restricted to authorized personnel only. Access to computer records is limited to authorized personnel and password protected.

RETENTION AND DISPOSAL:

Docket files in reparations cases are maintained for 10 years after final disposition of the case. Docket files in enforcement cases are maintained for 15 years after final disposition of the case.

SYSTEM MANAGER(S) AND ADDRESS:

Proceedings Clerk, Office of Proceedings, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Fourth Floor, Washington, DC 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone (202) 418–5105.

RECORD SOURCE CATEGORIES:

Commission staff members; opposing parties and their attorneys; proceeding witnesses; and miscellaneous sources.

## CFTC–4

SYSTEM NAME:

Employee Leave, Time and Attendance.

SYSTEM LOCATION:

The information in the system is kept in the CFTC offices in which the employee described by the records is located. Information is also kept centrally on the computer system located in the Department of Agriculture's National Finance Center, New Orleans, Louisiana.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All CFTC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Various records reflecting CFTC employees' time and attendance and leave status, as well as the allocation of employee time to designated budget account codes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 6101–6133; 5 U.S.C. 6301–6326; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. In response to legitimate requests, this information may be provided to other Federal agencies for the purpose of hiring or retaining employees, and may be provided to other prospective employers, to the extent that the information is relevant to the prospective employer's decision in the matter.

b. The information may be provided to the Justice Department or other Federal agencies or used by the Commission in connection with any investigation, or administrative or legal proceeding involving any violation of any Federal law or regulation thereunder.

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

STORAGE:

Hard copies of time and attendance worksheets, leave request slips and signed printouts; diskettes; mainframe computer (NFC).

RETRIEVABILITY:

By the name of the employee or by the employee number, cross-indexed by name.

SAFEGUARDS:

Lock boxes and/or locked file drawers. Password required for access to diskettes and NFC computer system.

RETENTION AND DISPOSAL:

Hard copy records, including leave slips, signed printouts from the PC–TARE system, overtime approval slips and budget account code worksheets are retained for six years, then destroyed. Diskettes are written over on a 12-month rotating cycle.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Human Resources, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone (202) 418–5105.

RECORD COURCE CATEGORIES:

The individual on whom the record is maintained.

## CFTC–5

SYSTEM NAME:

Employee Personnel/Payroll Records.

SYSTEM LOCATION:

This system is located in the Office of Human Resources and the Office of General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581 and on a computer system located in the Department of Agriculture's National Finance Center, New Orleans, Louisiana.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All CFTC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Payroll related information for current CFTC employees, including payroll and leave data for each employee relating to rate and amount of pay, leave and hours worked, and leave balances, tax and retirement deductions, life insurance and health insurance deductions, savings allotments, savings bonds and

charity deductions, mailing addresses and home addresses, direct deposit information, copies of the CFTC time and attendance reports as well as authorities relating to deductions, including salarly offset under Part 141 of the Commission's rules. The records maintained in the principal office for all employees include: a. Forms required and records maintained under the Commission's rules of conduct and Ethics in Government Act, such as the SF–278 and requests for approval of outside employment (CFTC Form 20); b. Various summary materials received in computer printout form; d. Awards information; and e. Training information.

The official personnel records maintained by the Commission are described in the system notices published by the Office of Personnel Management (OPM/GOVT–1), and are not included with the system.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

44 U.S.C. 3101, 5 U.S.C. APP. (Personnel Financial Disclosure Requirements).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

a. In response to legitimate request, this information may be provided to other Federal agencies for the purpose of hiring or retaining employees, and may be provided to other prospective employers, to the extent that the information is relevant to the prospective employer's decision in the matter.

b. The information may be provided in the Justice Department, the Office of Personnel Management or other Federal agencies, or used by the Commission in connection with any investigation or administrative or legal proceeding involving any violation of Federal law or regulation thereunder.

c. Certain information will be provided, as required by law, to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services Federal Parent Locator System (FPLS) and Federal Tax Offset System to enable state jurisdiction to locate individuals and identify their income sources to establish paternity, establish and modify orders of support, and the enforcement action.

d. Certain information will be provided, as required by law, to the Office of Child Support Enforcement for release to the Social Security Administration for verifying social security number in connection with the operation of the FPLS by the Office of Child Support Enforcement.

e. Certain information will be provided, as required by law, to the Office of Child Support Enforcement for release to the Department of Treasury for purposes of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return.

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

**STORAGE:**

Paper records in file folders, computer files, and computer printouts.

**RETRIEVABILITY:**

By the name or social security number of the employee.

**SAFEGUARDS:**

Lockable cabinets for paper records. Computer records accessible through password protected security system.

**RETENTION AND DISPOSAL:**

Maintained according to retention schedules prescribed by the General Records Schedule for each type of personnel/payroll record.

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

The Office of Human Resources, except for records maintained under the Commission's rules of conduct and the Ethics in Government Act for which the General Counsel is the system manager. See ''The Location of Systems of Records.''

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information about themselves or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone (202) 418–5105.

**RECORD SOURCE CATEGORIES:**

Individual on whom the record is maintained; personnel office records; and miscellaneous sources.

**CFTC–6**

**SYSTEM NAME:**

Employee Travel Records.

**SYSTEM LOCATION:**

This system is located in the Commission's office at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

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

Any Commission member, employee, witness, expert, advisory committee member or non-CFTC employee traveling on official business for the Commission.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Contains the name, address, destination, itinerary, mode and purpose of travel, dates, expenses, miscellaneous claims, amounts advanced, amounts claimed, and amounts reimbursed. Includes travel authorizations, travel vouchers, requests, receipts, invoices from credit card vendors' receipts, and other records.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 5701–5752; 31 U.S.C. 1, *et seq.;* 44 U.S.C. 3101.

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

The information may be provided to the Justice Department or other Federal agencies or used by the Commission in connection with any investigation, or administrative or legal proceeding involving any violation of Federal law or regulation thereunder.

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

**STORAGE:**

Paper records in file folders, computer files and computer printout.

**RETRIEVABILITY:**

By the name of the Commission member, employee witness, expert, advisory committee member or CFTC employee traveling on official business for the Commission, and by social security number.

**SAFEGUARDS:**

Access to the computer records is protected by a security system. General building security limits access to paper records kept in files of support staff in the offices of travelers and in the Travel Office.

**RETENTION AND DISPOSAL:**

Records are retained for six years after the period covered by the account.

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

Accounting Officer and Network Manager, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains

information about themselves, or seeking access to records about themselves in this system of records or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone (202) 418–5105.

**RECORD SOURCE CATEGORIES:**

The individual on whom the record is maintained.

**CFTC–7**

Deleted—Incorporated into CFTC–4 and CFTC–6.

**CFTC–8**

**SYSTEM NAME:**

Employment Applications.

**SYSTEM LOCATION:**

This system is located in the Office of Human Resources, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

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

Applicants for positions with the CFTC.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Contains the application and/or the resume of the applicant.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

44 U.S.C. 3101.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Information about these records is used in making inquiries concerning the qualifications of the applicant.

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

**STORAGE:**

Paper records in file folders.

**RETRIEVABILITY:**

By job announcement number. Summary information of applications is also available to staff of the Office of Human Resources through an automated applicant tracking system.

**SAFEGUARDS:**

Lockable cabinets for paper records. Access to applicant tracking system granted only to appropriate personnel.

**RETENTION AND DISPOSAL:**

Most applicant records are retained for two years, then destroyed. Job announcements that are filled through examining authority delegated from the Office of Personnel Management (OPM) are kept for 5 years then destroyed.

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

The Office of Human Resources, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone (202) 418–5105.

**RECORD SOURCE CATEGORIES:**

The individual on whom the record is maintained.

**CFTC–9**

Deleted—covered by OPM/GOVT–1

**CFTC–10**

**SYSTEM NAME:**

Exempted Investigatory Records.

**SYSTEM LOCATION:**

This system is located in the office of General Counsel in the Commission's principal office and the Division of Enforcement in the Commission's principal and regional offices. See ''The Location of Systems of Records.''

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

a. Individuals whom the staff has reason to believe have violated, are violating, or are about to violate the Commodity Exchange Act and the rules, regulations and orders promulgated thereunder.

b. Individuals whom the staff has reason to believe may have information concerning violations of the Commodity Exchange Act and the rules, regulations and orders promulgated thereunder.

c. Individuals involved in investigations authorized by the Commission concerning the activities of members of the Commission or its employees based upon formal complaint or otherwise.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Investigatory materials compiled for law enforcement purposes whose disclosure the Commission staff has determined could impair the effectiveness and orderly conduct of the Commission's regulatory and enforcement program or compromise Commission investigations. This system may include all or any part of the records developed during the investigation or inquiry, including data from Commission reporting forms, account statements and other trading records, exchange records, bank records and credit information, business records, reports of interviews, transcripts of testimony, exhibits to transcripts, affidavits, statements by witnesses, registration information, contracts and agreements. The system may also contain internal memoranda, reports of investigation, orders of investigation, subpoenas, warning letters, stipulations of compliance, correspondence and other miscellaneous investigatory matters. The nature of the personal information contained in these files varies according to what is considered relevant by the attorney assigned based on the circumstances of the particular case under investigation, and may include personal background information about the individual involved, his education and employment history, information on prior violations, and a wide variety of financial information, as well as a detailed examination of the individual's activities during the period in question.

**RETRIEVABILITY:**

By assigned matter number or name or by person or firm. A summary index of material is also stored on the computer.

**SAFEGUARDS:**

In addition to normal office and building security, certain of these records are maintained in locked file cabinets and/or secured file rooms. All employees are made aware of the sensitive nature of investigatory information. Computer access is restricted to authorized personnel.

**RETENTION AND DISPOSAL:**

Maintained until exemption is no longer necessary, then filed in the appropriate nonexempt system.

If an investigatory matter is closed without institution of a case, the files, other than opening and closing reports, are shipped to off-site storage within 90 days of closing. Records of preliminary inquiries closed without further action are forwarded to off-site storage within a year following closure. Records are maintained in off-site storage for 5 years, then destroyed.

If the Commission files an injunctive or administrative action or an appellate

matter, the related investigatory files and records are retained in the office conducting the litigation; the files and records remain exempt from disclosure under the Privacy Act. When the case is concluded; the investigatory materials are stored and disposed of on the same schedule as the related non-exempt case files (see CFTC–16 and CFTC–17).

The Office of General Counsel retains copies of certain investigatory materials indefinitely.

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

Director, Division of Enforcement in the Commission's principal office or the Regional Counsel of the region where the investigation is being conducted, or the General Counsel. See ''The Location of Systems of Records.''

**RECORD SOURCE CATEGORIES:**

a. Reporting forms and other information filed with the Commission; b. self-regulatory organizations; c. persons or firms covered by the Commission's registration requirements; d. Federal, state and local regulatory and law enforcement agencies; e. banks, credit organizations and other institutions; f. corporations; g. individuals having knowledge of the facts; h. attorneys; i. publications; j. courts; and k. miscellaneous sources.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

The records in this system have been exempted by the Commission from certain provisions of the Privacy Act of 1974 pursuant to the terms of the Privacy Act, 5 U.S.C. 552a(k)(2), and the Commission's rules promulgated thereunder, 17 CFR 146.12. These records are exempt from the notification procedures, records access procedures, and record contest procedures set forth in the system notices of other record systems, and from the requirement that the sources of records in the system be described.

**CFTC–11**

Deleted—Incorporated into CFTC–20.

**CFTC–12**

**SYSTEM NAME:**

Fitness Investigations.

**SYSTEM LOCATION:**

Records for floor brokers and floor traders with respect to matters commenced prior to August 1, 1994: Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Records for futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, their respective associated persons and principals, with active registration status in any capacity on or after October 1, 1983; leverage transaction merchants and their associated persons and principals with active registration status as such on or after August 1, 1994; floor brokers and floor traders with active registration status as such on or after August 1, 1994; and Agricultural Trade Option Merchants (ATOMs) and their associated persons: National Futures Association (NFA), 200 West Madison Street, Suite 1400, Chicago, Illinois 60606–3447. (See also ''Retention and Disposal,'' infra.)

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

Persons who have applied or who may apply for registration as futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, leverage transaction merchants and agricultural trade option merchants; persons listed or who may be listed as principals (as defined in 17 CFR 3.1); persons who have applied or who may apply for registration as associated persons of the foregoing firms; and floor brokers and floor traders.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Information pertaining to the fitness of the above-described individuals to engage in business subject to the Commission's jurisdiction. The system contains information in computerized images or alpha-numeric format and hardcopy format including registration forms, schedules and supplements, fingerprint cards which are required for registrants except ATOMs, correspondence relating to registration, and reports and memoranda reflecting information developed from various sources. In addition, the system contains records of each fitness investigation.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Secs. 4f(1), 4k(4), 4k(5), 4n(1), 8a(1)–(5), 8a(10), 8a(11), 17(o) and 19 of the Commodity Exchange Act as amended, 7 U.S.C. 6f(1), 6k(4), 6k(5), 6m(1), 12a(1)–(5), 12a(10), 12a(11), 21(o) and 23 (1994).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The routine uses applicable to all of the Commission's systems of records, including this system, are set forth under the ''General Statement of Routine Uses.'' In addition, the Commission may disclose information contained in this system of records as follows:

1. Information contained in this system of records may be disclosed to any person with whom an applicant or registrant is or plans to be associated as an associated person or affiliated as a principal.

2. Information contained in this system of records may be disclosed to any registered futures commission merchant with whom an applicant or registered introducing broker has or plans to enter into a guarantee agreement in accordance with Commission regulation 1.10 (17 CFR 1.10).

NFA may disclose information contained in those portions of this system of records, but any such disclosure must be made in accordance with NFA rules that have been approved by the Commission or permitted to become effective without Commission approval. The disclosure must be made under circumstances authorized by the Commission as consistent with the Commission's regulations and routine uses. No specific consent is required by an applicant or registered introducing broker to disclosure of information to the futures commission merchant with whom it has or plans to enter a guarantee agreement.

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

**STORAGE:**

Paper records in file folders, computer files, computer printouts, index cards, microfiche.

**RETRIEVABILITY:**

By the name of the individual or firm, or by assigned identification number. Where applicable, the NFA's computer cross-indexes the individual's file to the name of the futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant or agricultural trade option merchant with which the individual is associated or affiliated.

**SAFEGUARDS:**

General office security measures include secured rooms or premises with access limited to persons whose official duties require access. Access to computer systems is password protected and limited to authorized personnel only.

**RETENTION AND DISPOSAL:**

Since 1991, when a fitness investigation is opened by NFA, applications, biographical supplements,

other forms, related documents, correspondence and reports are immediately scanned, indexed and stored using computer imaging software so the information may be retrieved and printed. Both hard copy and imaged records are maintained by NFA for 10 years after the individual becomes inactive or for 10 years after the firm with which the individual is associated becomes inactive. Records retained by CFTC are held for 10 years.

NFA also maintains an index and summary of the hard copy records of this system in a database, the Membership, Registration, Receivables System (MRRS). The MRRS records are maintained permanently by NFA, as applicable, and are updated periodically as long as the individual is active. MRRS records on persons who may apply may be maintained indefinitely; microfiche records produced for back up of MRRS records for 1995 and earlier are maintained permanently by NFA.

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

Director, Division of Trading and Markets, at the Commission's principal office, or a designee. For records held by NFA, the systems manager is the Vice President for Registration, National Futures Association, 200 West Madison Street, Suite 1400, Chicago, Illinois 60606–3447, or a designee.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information about themselves, seeking access to records about themselves in this system of records or contesting the content of records about themselves should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone (202) 418–5105.

Individuals may also request registration information by telephone directly from the NFA information center at 1–800–621–3570 or 312–781–1410. Inquiries can also be made to NFA by FAX (312–781–1459) or via the Internet at inquiry@nfa.futures.org. NFA will query the MRRS system about current registration status and registration history, and will provide instructions on how to make written requests for copies of records. The Internet may be used to obtain information on current registration status and futures-related regulatory actions at www.nfa.futures.org by selecting ''BASIC.''

**RECORDS SOURCE CATEGORIES:**

The individual or firm on whom the record is maintained; the individual's employer; Federal, state and local regulatory and law enforcement agencies; commodities and securities exchanges; National Futures Association; National Association of Securities Dealers; foreign futures and securities authorities and INTERPOL; and other miscellaneous sources. Computer records are prepared from the forms, supplements, attachments and related documents submitted to the Commission or NFA and from information developed during the fitness inquiry.

**CFTC–13**

**SYSTEM NAME:**

Interpretative, Exemptive and No-Action Files.

**SYSTEM LOCATION:**

Most files are prepared by the Division of Trading and Markets and are kept in that Office. Public copies of the interpretative, exemptive and no-action letter, which may be redacted, are also kept in the Secretariat and the Office of Public Affairs. All offices are located at the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

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

Persons who have requested the Commission or its staff to provide interpretations, exemptions or no-action positions regarding the provisions of the Commodity Exchange Act or the Commission's regulations thereunder. The requests may have been made directly by an individual, or through the individual's attorney or other representative. A request may also be made on behalf of a registrant or other party that contains information about individuals employed by or affiliated with the registrant or other party. Registrants include futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, agricultural trade option merchants, leverage transaction merchants, associated persons, floor brokers and floor traders.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Requests for interpretative, exemptive and no-action letters, supplemental correspondence, any related internal memoranda, other supporting documents and the responses to the requests.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Sec. 2(a)(4) of the Commodity Exchange Act, 7 U.S.C. 4a(c), 44 U.S.C. 3101.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

a. Pursuant to the Commission's rules, 17 CFR 140.98, substantive interpretative, exemptive and no-action letters are made public and published by the Commission. Portions of such letters or information will be deleted or omitted to the extent necessary to prevent a clearly unwarranted invasion of personal privacy or to the extent they otherwise contain material considered nonpublic under the Freedom of Information Act and the Commission's rules implementing that Act.

b. Information in these files may be used as a reference in responding to later inquiries from the same party, in following up on earlier correspondence involving the same person, or when another person raises the same or similar issues.

c. Also see ''General Statement of Routine Uses.''

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

**STORAGE:**

Paper records in file folders.

**RETRIEVABILITY:**

The Division of Trading and Markets (T&M) has two tracking systems in place. One system is based on information contained in incoming correspondence. It may be search by, among other things, the name of the individual who signed the request letter (the requester) and the firm of which the individual is a partner, owner, or employee (such as a law firm, operating company or registrant.) Searchable fields may also include subject matter information such as the names of the parties and trading entities cited in the document. T&M has a second tracking system which is based on information contained in published and unpublished letters issued by T&M since 1991. This system may be searched by the name of the requester, the firm with which he or she is affiliated and the names of the parties and trading entities involved. Public copy files in the Secretariat and the Office of Public Affairs are filed by the name of the requester, even if another party makes the request on behalf of the requester. If the name of the firm or individual on whose behalf the request is made is not know, the records are maintained in the name of the attorney

or other representative making the request.

**SAFEGUARDS:**

Access to non-public records is limited to the offices where the records are maintained and is limited to authorized personnel.

**RETENTION AND DISPOSAL:**

Letters signed by the Commission and unique, precedent-setting letters signed by staff are maintained by CFTC for 20 years, then transferred to the National Archives and records Administration as permanent records. Other letters signed by staff are destroyed after 15 years.

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

Director, Division of Trading and Markets; the Secretary to the Commission; and the Director, office of Public Affairs. All system managers are located in the Commission's principal office. See ''The Location of Systems of Records.''

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone (202) 418–5105.

**RECORD SOURCE CATEGORIES:**

Individuals, corporations, limited liability companies, other business organizations, or representatives seeking interpretations of, exemptions from, or no-action opinions on the provisions of the Commodity Exchange Act or Commission rules.

**CFTC–14**

Deleted—Incorporated in CFTC–10.

**CFTC–15**

**SYSTEM NAME:**

Large Trader Report Files.

**SYSTEM LOCATION:**

The copies of original reports and related correspondence are located in the CFTC office where filed. See further description below. Ancillary records and information (computer printout) may be located in any CFTC office. See ''The Location of Systems of Records.''

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

Individuals holding reportable positions as defined in 17 CFR parts 17, 18 and 19.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

1. Reports filed by the individual holding the reportable position:

a. Statements of Reporting Trader (CFTC Form 40) contains information described in part 18 of the Commission's rules and regulations, including the name, address, number, and principal occupation of the reporting trader, financial interest in and control of commodity futures accounts, and information about the trader's business associations;

b. Large trader reporting form (Series 03 Form). Contains information described in part 18 of the Commission's rules and regulations, including the trader's identifying number, previous open contracts, trades and deliveries that day, open contracts at the end of the day, and classification as to speculation or hedging (available on a non-routine basis by special call);

c. Large trader reporting form (Series 04 Form). Contains information described in part 19 of the Commission's rules and regulations, to be filed by merchants, processors and dealers in commodities that have federally imposed speculative position limits. Includes trader's identifying number, stocks owned, fixed price sale and purchase commitments. These reports are filed in the CFTC office in the city where the reporting trader is located. If there is no CFTC office in that city, the reports are filed according to specific instructions of the CFTC.

2. Reports to be filed by futures commission merchants, members of contract markets, foreign brokers and, for large option traders, by contract markets.

a. Identification of ''Special Accounts'' (CFTC Form 102). Contains material described in part 17 of the Commission's rules and regulations. Includes the name, address, and occupation of a customer whose accounts have reached the reporting level. Also includes the account number that the futures commission merchant uses to identify this customer on the firm's 01 report (see next paragraph), and whether the customer has control of or financial interest in accounts of other traders.

b. Large trader reporting form (Series 01 Form). Contains material described in part 17 of the Commission's rules and regulations, for each ''special account.'' Shows customer account number, reportable position held in each commodity future and information concerning deliveries and exchanges of futures for physicals by persons with reportable positions. These reports are filed, mostly in machine-readable form, in the CFTC office in the city where the contract market involved is located. If there is no CFTC office in that city, they are filed in the office where the CFTC instructs that they be filed.

3. Computer records prepared from information on the forms described in items (1) and (2) above.

4. Correspondence and memoranda of telephone conversations between the Commission and the individual or between the Commission and other agencies dealing with matters of official business concerning the individual.

5. Other miscellaneous information, including intra-agency correspondence and memoranda concerning the individual and documents relating to official actions taken by the Commission against the individual.

6. Reports from contract markets concerning futures and options:

a. Positions and Transactions of Clearing Member Firms. Information is provided in machine-readable form and contains the data prescribed in part 16 of the Commission's regulations. The information includes an identification number for each clearing member, open contracts at the firm for proprietary and customer accounts and transactions such as trades, exchanges of futures for physicals, delivery notices issued and received, and transfers and option exercises. The information is filed in the city where the exchange is located or as instructed by the Commission. Data is transmitted to the CFTC computer system and printouts are available at all CFTC offices.

b. Large Option Trader Data. Information is provided in machine-readable form and contains the data prescribed in Commission Rule 16.02. Shows customer account number and reportable option positions as specified in Rule 16.02. Machine-readable media is delivered to the Commission office in which the contract market is located or as instructed by the Commission. The data is transmitted to the CFTC computer system and printouts of the data are available in each Commission office.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Sec. 4g, 4i, and 8 of the Commodity Exchange Act, 7 U.S.C. 6g, 6i, and 12.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

See ''General Statement of Routine Uses.'' In addition, information

concerning traders and their activities may be disclosed and made public by the Commission to the extent permitted by law when deemed appropriate to further the practices and policies of the Commodity Exchange Act.

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

STORAGE:

Paper records in file folders, computer files, and computer printout.

RETRIEVABILITY:

Form 40, Form 102, correspondence and other miscellaneous information are maintained directly under the name of the reporting trader. The series 01, 03, and 04 forms are maintained by identifying code number. However, information from these forms is included in the computer and retrievable by individual identifier.

SAFEGUARDS:

General office security measures, with recent trading reports stored in lockable file cabinets. Access is limited to those whose official duties require access.

RETENTION AND DISPOSAL:

CFTC Form 40, CFTC Form 102, correspondence, memoranda, etc. are retained on the premises until the account has been inactive for 5 years and are then destroyed. Form 01, 03, and 04 reports are maintained for 6 months on the premises and then held in off-site storage for 5 years before being destroyed. The computer file is maintained for 10 years for Form 01, 03, and 04 reports and large trader options data reported by contract markets. Clearing member positions and transactions are maintained for 2 years. Trader code numbers and related information are maintained for 5 years after a trader becomes nonreportable. Account numbers assigned by an FCM are maintained on the system for 1 year after the account is no longer reported.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Surveillance Branch, in the region where the records are located. See ''The Location of Systems of Records.''

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone (202) 418–5105. Include the code number assigned by the Commission for filing reports, the name of the futures commission merchant through whom traded, and the time period for which information is sought.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained and futures commission merchants through whom the individual trades. Correspondence and memoranda prepared by the Commission or its staff. Correspondence from firms, agencies, or individuals requested to provide information on the individual.

## CFTC–16

SYSTEM NAME:

Enforcement Case Files.

SYSTEM LOCATION:

This system is located in the Commission's principal and regional offices. Pending litigation files may be located in other participating offices. See ''The Location of Systems of Records.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons or firms against whom the Commission has taken enforcement action based on violations of the Commodity Exchange Act or the rules and regulations promulgated thereunder.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of various public papers filed by or with the Commission or the courts in connection with administrative proceedings or injunctive actions brought by the Commission. Records include, as a minimum, a copy of the complaint, motions filed, exhibits and the final decision and order.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These files are necessary for the orderly and effective conduct of litigation authorized under the Commodity Exchange Act and other Federal statutes. See, e.g., section 6c of the Commodity Exchange Act, 7 U.S.C. 13a–1, authorizing injunctive actions, and various provisions in that Act authorizing administrative actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See ''General Statement of Routine Uses.'' The information in these files is generally a matter of public record and may be disclosed without restriction.

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

STORAGE:

Paper records in file folders or binders, disks, computer files, computer printouts. A summary index of material is also stored on the computer.

RETRIEVABILITY:

By case title or in some instances by docket number.

SAFEGUARDS:

General office security measures including secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

After an action is complete, the complaint and any final decision or dispositive orders are kept indefinitely at the headquarters office. Most case files are destroyed after 15 years; unique, precedent-setting cases are forwarded to the National Archives and Records Administration for permanent retention after 20 years.

SYSTEM MANAGERS AND ADDRESS:

Director, Division of Enforcement at the Commission's principal office and Regional Counsel for the region where the records are located. See ''The Location of Systems Records.''

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC. 20581.

RECORD SOURCE CATEGORIES:

The parties, their attorneys, the Commission's Proceedings Clerk's Office, the relevant court, and miscellaneous sources.

## CFTC–17

SYSTEM NAME:

Litigation Files-OGC.

SYSTEM LOCATION:

This system is located in the Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

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

Parties involved in litigation with the Commission or litigation in which the Commission has an interest including, but not limited to:

a. Administrative proceedings before the Commission;

b. Federal court cases to which the Commission is a party;

c. Litigation in which the Commission is participating as amicus curiae; and

d. Other cases involving issues of concern to the Commission, including those brought by other law enforcement and regulatory agencies and those brought by private parties.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Public papers filed in litigation as described above, including appellate and amicus curiae briefs, motions, and final decisions and orders.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

The Commodity Exchange Act, 7 U.S.C. 1, et seq., entrusts the Commission with broad regulatory responsibilities over commodity futures transactions. In this connection, the Commission is authorized to bring both administrative proceedings and injunctive actions where there appear to have been violations of the Act. Furthermore, to effectuate the purposes of the Act, it is necessary that the Commission staff be familiar with developments in other actions brought by others that have implications in the commodity law areas.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The information in these files is generally a matter of public record and may be disclosed without restriction. Also see ''General Statement of Routine Uses.''

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

**STORAGE:**

Paper records in file folders, as well as disks, computer files and computer printouts.

**RETRIEVABILITY:**

Alphabetically by caption of the case.

**SAFEGUARDS:**

General office security measures including secured rooms or premises with access limited to those whose official duties require access. Computer access is also limited to authorized personnel.

**RETENTION AND DISPOSAL:**

Maintained in the active files until the action is completed, including final review at the appellate level. Thereafter, transferred to the inactive case files, where a skeletal record of pleadings, briefs, findings, and opinions and other particularly relevant papers may be maintained. These records are maintained on premises for five years, then transferred to off-site storage. Most case files are destroyed after 15 years; unique precedent setting cases are destroyed after 20 years. A copy of some of the documents may be kept in precedent files for use in later legal research or preparation of filings in other matters.

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

The Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone (202) 418–5105.

**RECORD SOURCE CATEGORIES:**

The court or regulatory authority before whom the action is pending, the attorneys for one of the named parties, and miscellaneous sources.

## CFTC–18

**SYSTEM NAME:**

Logbook on Speculative Limit Violations.

**SYSTEM LOCATION:**

This system is located in the Commission's Chicago and New York regional offices. See ''The location of Systems of Records.''

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

Individuals who have exceeded speculative limits in a particular fiscal year.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

A listing, by year, of the violations of speculative limits imposed by the Commission and the exchanges. It includes the trader's assigned code number, the commodity involved, the name of the trader, the type of violation, the date of the violation, the date the violation ceased, and the action taken. Copies of warning letters and replies pertaining to the violation listed are maintained with the logbook.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Secs. 4i and 8 of the Commodity Exchange Act, 7 U.S.C. 6i and 12.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

See ''General Statement of Routine Uses.''

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

**STORAGE:**

Paper records in file folders.

**RETRIEVABILITY:**

By fiscal year, and within each year by the name of the violator.

**SAFEGUARDS:**

General office security measures including secured rooms or premises with access limited to those whose official duties require access.

**RETENTION AND DISPOSAL:**

Maintained on the premises for 5 years, then held off-site for 15 years before being destroyed.

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

Chief, surveillance Branch, Central Regional Office, Commodity Futures Trading Commission, 300 South Riverside Dr., Suite 1600 North, Chicago, Ilinois 60606; Chief, Surveillance Branch, Eastern Regional Office, Commodity Futures Trading Commission, One World Trade Center, Suite 3747, New York, New York 10048.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information about themselves or seeking access to records about themselves contained in this system or records or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington DC 20581. Telephone (202) 418–5105.

**RECORD SOURCE CATEGORIES:**

Series 03 reports filed by traders and series 01 reports filed by FCMs.

Correspondence prepared by the Commission or by the individual or individual's representative.

**CFTC–19**

Deleted—Incorporated into CFTC–29.

**CFTC–20**

**SYSTEM NAME:**

Registration of Floor Brokers, Floor Traders, Futures Commission Merchants, Introducing Brokers, Commodity Trading Advisors, Commodity Pool Operators, Leverage Transaction Merchants, Agricultural Trade Option Merchants and Associated Persons.

**SYSTEM LOCATION:**

National Futures Association (NFA), 200 West Madison Street, Suite 1400, Chicago, Illinois 60606–3447.

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

Persons who have applied or who may apply for registration as futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, leverage transaction merchants and agricultural trade option merchants (ATOMs); persons listed or who may be listed as principals (as defined in 17 CFR 3.1); persons who have applied or may apply for registration as associated persons of the foregoing firms; and floor brokers and floor traders.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Information pertaining to the registration and fitness of the above-described individuals, except ATOMs, to engage in business subject to the Commission's jurisdiction. Information on ATOMs includes only the names and registration status of ATOMs and their associated persons. The system includes registration forms, schedules, and supplements; corresponsence relating to registration; and reports and memoranda reflecting information developed from various sources.

Computerized systems, consisting primarily of information taken from the registration forms, are maintained by NFA. Computer records include the name, date and place of birth, social security number (optional), exchange membership (floor brokers and floor traders only), firm affiliation, and the residence or business address, or both, of each associated person, floor broker, floor trader and principal. Computer records also include information relating to name, trade name, principal office address, records, address, names of principals and branch managers of futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, leverage transaction merchants, and agricultural trade option merchants.

Directories, when produced, list the name, business address, and exchange membership affiliation of all registered floor brokers and the name and firm affiliation of all associated persons and principals. These directories are sold to the public by NFA. Regiatration forms and biographic supplements, except for any confidential information on supplementary attachments to the forms, are publicly available for disclosure, inspection and copying.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Secs. 4f(1), 4k(4), 4k(5), 4n(1), 8a(1), 8a(5), 8a(10) and 19 of the Commodity Exchange Act as amended, 7 U.S.C. 6f(1), 6k(4), 6k(5), 6n(1), 12a(1), 12a(5), 12a(10), and 23 (1994).

**ROUTINE USES OF THE RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

See ''General Statement of Routine Uses.'' In addition, the Commission may disclose information contained in this system of records as follows:

1. Information contained in this system of records may be disclosed to any person with whom an applicant or registrant is or plans to be associated as an associated person or affiliated as a principal.

2. Information contained in this system of records may be disclosed to any registered futures commission merchant with whom an applicant or registered introducing broker has entered or plans to enter into a guarantee agreement in accordance with Commission regulation 1.10(17 CFR 1.10).

NFA may disclose information contained in those portions of this system of records maintained by NFA, but any such disclosure must be made in accordance with Commission-approved NFA rules and that have been approved by the Commission or permitted to become effective without Commission approval. Disclosures must be made under circumstances authorized by the Commission as consistent with the Commission's regulations and routine uses. No specific consent is required by an applicant or registered introducing broker to disclosure of information to the futures commission merchant with whom it has or plans to enter a guarantee agreement.

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

**STORAGE:**

Paper records in file folders, computer files, computer printouts, indexed cards, and microfiche.

**RETRIEVABILITY:**

By the name of the individual or firm, or by assigned identification number. Where applicable, the NFA's computer cross-indexes the individual's primary registration file to the name of the futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant or agricultural trade option merchant with whom the individual is associated for affiliated.

**SAFEGUARDS:**

General office security measures including secured rooms or premises with access limited to those whose official duties require access. Access to computer files limited to authorized personnel.

**RETENTION AND DISPOSAL:**

Hard copies of applications, biographical supplements, other forms, related documents and correspondence are maintained on the NFA's premises, as applicable, for two years after the individual's registration(s), or that of the firm(s) with which the individual is associated as an associated person or affiliated as a principal, becomes inactive. Hard copies of records are then stored at an appropriate site for eight additional years before being destroyed.

NFA also maintains an index and summary of the hard copy records of this system in a database, the Membership, Registration, Receivables System (MRRS). The MRRS records are maintained permanently and are updated periodically as long as the individual has a registration application pending, is registered in any capacity, or is affiliated with any registrant in any capacity. MRRS records on persons who may apply may be maintained indefinitely.

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

Director, Division of Trading and Markets, or designee, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581, and Vice President for Registration, National Futures Association, 200 West Madison Street, Suite 1400, Chicago, Illinois 60606–3447.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information about themselves, seeking access to records about themselves in this system of records, or contesting the content of records about themselves should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three LaFayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone (202) 418–5105.

Individuals may also request registration information by telephone from the NFA information center at 1–800–621–3570 or 312–781–1410. Inquiries can also be made to NFA by FAX (312–781–1459) or via e-mail at inquiry@nfa.futures.org. NFA will query the MRRS system about current registration status and registration and disciplinary history, and will provide instructions on how to make written requests for copies of records. The Internet may be used to obtain information on current registration status and futures-related regulatory actions at www.nfa.futures.org by selecting ''BASIC.''

**RECORD SOURCE CATEGORIES:**

The individual or firm on whom the record is maintained; the individual's employer; and other miscellaneous sources. The computer records are prepared from the forms, supplements, attachments and related documents submitted to the NFA.

**CFTC–21**

Deleted—Incorporated into CFTC–20.

**CFTC–22**

Deleted—Incorporated into CFTC–20.

**CFTC–23**

Deleted—Incorporated into CFTC–20.

**CFTC–24**

Deleted—Incorporated into CFTC–20.

**CFTC–25**

Deleted.

**CFTC–26**

Deleted—Incorporated into CFTC–10.

**CFTC–27**

Deleted.

**CFTC–28**

**SYSTEM NAME:**

SRO Disciplinary Action File.

**SYSTEM LOCATION:**

Records in this system are maintained at the Commission's principal and regional offices. See ''The Location of Systems of Records.''

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

Persons who have been suspended, expelled, disciplined, or denied access to or by a self-regulatory organization (SRO).

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Letters of notification of disciplinary or other adverse action taken by an exchange that include the name of the person against whom such action was taken, the action taken and the reasons therefore.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Sec. 8c(1)(B) of the Commodity Exchange Act, 7 U.S.C. 12c(1)(B).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

See ''General Statement of Routine Uses.''

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

**STORAGE:**

Loose-leaf binders, computer files, and computer printouts.

**RETRIEVABILITY:**

By chronological order according to the self-regulatory organization that took the disciplinary or other adverse action that is the subject of the notice and by the name of the individual.

**SAFEGUARDS:**

General office security measures. Computer access limited to authorized personnel.

**RETENTION AND DISPOSAL:**

Retained for ten years.

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

Associate Director, Contract Markets Section, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Telephone (202) 418–5105.

**RECORD SOURCE CATEGORIES:**

Self-regulatory organizations notifying the Commission of disciplinary or other adverse actions taken.

**CFTC–29**

**SYSTEM NAME:**

Reparations Complaints.

**SYSTEM LOCATION:**

This system is located in the Office of Proceedings, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

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

Individuals filing customer reparations complaints, as well as the firms and individuals named in the complaints.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Reparations complaints, answers, supporting documentation and correspondence filed with the Office of Proceedings. If the complaint is forwarded for decision by an administrative law judge or proceedings officer, records become part of CFTC–3, Docket Files.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Sec. 14 of the Commodity Exchange Act, 7 U.S.C. 18.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

These records are used in the conduct of the Commission's reparations program. Also see ''General Statement of Routine Uses.''

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

**STORAGE:**

Paper records in file folders, computer files, computer printouts.

**RETRIEVABILITY:**

By docket number and cross-indexed by the name of the complainant and respondent.

**SAFEGUARDS:**

General office security including secured rooms and, in appropriate cases, lockable file cabinets, with access to offices and computers limited to authorized personnel.

**RETENTION AND DISPOSAL:**

The records are maintained for 10 years after the case is closed, except that complaints, decisions, and Commission opinions and orders, are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Proceedings, Complaints Section, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington DC 20581. Telephone (202) 418–5105.

RECORD SOURCE CATEGORIES:

Persons filing reparations complaints or answers.

## CFTC–30

SYSTEM NAME:

Open Commission Meetings—CFTC.

SYSTEM LOCATION:

This system is located in the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are the subject of discussion at a Commission meeting open for public observation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information pertaining to the individuals who are the subject of discussion at an open Commission meeting.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Government in the Sunshine Acts, 5 U.S.C. 552b(f) and Commission regulations at 17 CFR 147.7.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in these files is a matter of public record and may be disclosed without restriction. Also see ''General Statement of Routine Uses.''

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

STORAGE:

Paper records in file folders; computer memory; computer printouts; microfiche; and audiocassette tapes.

RETRIEVABILITY:

The indices to the recordings, transcripts, and minutes of all Commission meetings are organized by year in chronological order. Each yearly index is further indexed in alphabetical order according to subject matter, including the names of individuals, firms, exchanges or other topics that are discussed at the meetings.

SAFEGUARDS:

Maintained in lockable file cabinets on secured premises or password-protected computer systems, with access limited to whose official duties require access.

RETENTION AND DISPOSAL:

Maintained on the premises for at least the statutory period required by the Sunshine Act and Commission regulations (i.e., at least two years after each meeting or at least one year after the conclusion of any agency proceeding with respect to which the meeting or portion of the meeting was held, whichever is later); transferred to the National Archives as permanent records when 20 years old.

SYSTEM MANAGERS(S) AND ADDRESS:

Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves, seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOIA, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone (202) 418–5105.

RECORD SOURCE CATEGORIES:

1. The information recorded during Commission meetings concerning individuals who are the subject of discussion at the meetings is generated by the staff in one or more Divisions.

2. The indices are prepared from the recordings, transcripts and/or minutes.

## CFTC–31

SYSTEM NAME:

Exempted Closed Commission Meetings-CFTC.

SYSTEM LOCATION:

This system is located in the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are the subject of discussion at a closed Commission meeting.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information pertaining to individuals who are the subject of discussion at a closed Commission meeting. This information consists of (a) investigatory materials compiled for law enforcement purposes whose disclosure the Commission has determined could impair the effectiveness and orderly conduct of the Commission's regulatory, enforcement and contract market surveillance programs or compromise Commission investigations, or (b) investigatory materials compiled solely for the purpose of determining suitability, eligibility, or qualifications for employment with the Commission to the extent that it identifies a confidential source.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Government in the Sunshine Act, 5 U.S.C. 552b(f), and Commission regulations at 17 CFR 147.7.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See ''General Statement of Routine Uses.''

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

STORAGE:

Paper records in file folders; computer memory; computer printouts; microfiche; and audiocassette tapes.

RETRIEVABILITY:

The indices to the recordings, transcripts, and minutes of all Commission meetings are organized by year in chronological order. Each yearly index is further indexed in alphabetical order according to subject matter, including the names of individuals, firms, exchanges or other topics, which are discussed at the meetings.

SAFEGUARDS:

Maintained in lockable file cabinets on secured premises or passwood-protected computer systems, with access limited to those whose official duties require access.

**RETENTION AND DISPOSAL:**

Maintained on the premises for at least the statutory period required by the Sunshine Acts and Commission regulations (i.e., at least two years after each meeting or at least one year after the conclusion of any agency proceeding with respect to which meeting was held, whichever is later); transferred to the National Archives as permanent records when 20 years old.

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

Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

**SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

The records in this system have been exempted by the Commission from certain provisions of the Privacy Act of 1974 pursuant to the terms of the Privacy Act, 5 U.S.C. 552a, and the Commission's rules promulgated thereunder, 17 CFR 146.12. These records are exempted from the notification procedures, record access procedures and record contest procedures set forth in the system notices of other record systems, and from the requirement that the source of records in the system be described.

**CFTC–32**

**SYSTEM NAME:**

Office of the Inspector General Investigative Files.

**SYSTEM LOCATION:**

Office of the Inspector General, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

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

Individuals who are part of an investigation of fraud and abuse concerning Commission programs or operations.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

All correspondence relevant to the investigation; all internal staff memoranda, copies of all subpoenas issued during the investigation, affidavits, statement from witnesses, transcripts of testimony taken in the investigation and accompanying exhibits; documents and records or copies obtained during the investigation; opening reports, progress reports and closing reports; and an index of individuals investigated.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Pub. L. 95–452, as amended, 5 U.S.C. App. 3.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

1. The information in the system may be used or disclosed by the Commission in any administrative proceeding before the Commission, in any injunctive action, or in any other action or proceeding authorized under the Commodity Exchange Act or the Inspector General Act of 1978 in which the Commission or any member of the Commission or its staff participates as a party or the Commission participates as amicus curiae.

2. In any case in which records in the system indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be referred to the appropriate agency, whether Federal, foreign, state or local, charged with enforcing or implementing the statute, regulation, rule or order.

3. In any case in which records in the system indicate a violation or potential violation of law, whether civil, criminal or regulatory in nature, the relevant records may be referred to the appropriate board of trade designated as a contract market by the Commission or to the appropriate futures association registered with the Commission, if the OIG has reason to believe this will assist the contract market or registered futures association in carrying out its self-regulatory responsibilities under the Commodity Exchange Act, 7 U.S.C. 1 et seq., and regulations, rules or orders issued pursuant thereto, and such records may also be referred to any national securities exchange or national securities association registered with the Securities and Exchange Commission, to assist those organizations in carrying out their self-regulatory responsibilities under the Securities Exchange Act of 1934, 15 U.S.C. 78a et seq., and regulations, rules or orders issued pursuant thereto.

4. The information may be given or shown to anyone during the course of an OIG investigation if the staff has reason to believe that disclosure to the person will further the investigation. Information may also be disclosed to Federal, foreign, state or local authorities in order to obtain information or records relevant to an OIG investigation.

5. The information may be given to independent auditors or other private firms with which the OIG has contracted to carry out an independent audit, or to collate, aggregate or otherwise refine data collected in the system of records. These contractors will be required to maintain Privacy Act safeguards with respect to such records.

6. The information may be disclosed to a Federal, foreign, state or local government agency where records in either system of records pertain to an applicant for employment, or to a current employer of that agency where the records are relevant and necessary to an agency decision concerning the hiring or retention of an employee or disciplinary or other administrative action concerning an employee.

7. The information may be disclosed to a Federal, foreign, state, or local government agency in response to its request in connection with the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

8. The information may be disclosed to the Department of Justice or other counsel to the Commission for legal advice or to pursue claims and to government counsel when the defendant in litigation is (a) any component of the Commission or any member or employee of the Commission in his or her official capacity, or (b) the United States or any agency thereof. The information may also be disclosed to counsel for any Commission member or employee in litigation or in anticipation of litigation in his or her individual capacity where the Commission or the Department of Justice agrees to represent such employee or authorizes representation by another.

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

**STORAGE:**

Paper records in file folders, computer diskettes and computer files.

**RETRIEVABILITY:**

Investigative files are retrieved by the subject matter of the investigation or by case file number. An index provides a cross-reference on individuals investigated.

**SAFEGUARDS:**

The records are kept in limited access areas during duty hours and in file cabinets in locked offices at all other times. These records are available only to those persons whose official duties

require such access. Computer files are available only to authorized personnel.

RETENTION AND DISPOSAL:

The Office of the Inspector General Investigative Files and the index to the files are destroyed twenty years after the case is closed.

SYSTEM MANAGER AND ADDRESS:

Inspector General, Office of the Inspector General, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether the system of records contains information about themselves, seeking access to records about themselves in the systems of records, or contesting the content of records about themselves, should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Wsahington, DC 20581.

RECORD SOURCE CATEGORIES:

Information in these records is supplied by: Individuals including, where practicable, those to whom the information relates; witnesses, corporations, and other entities; records of individuals and of the Commission; records of other entities; Federal, foreign, state or local bodies and law enforcement agencies; documents, correspondence relating to litigation, and transcripts of testimony; and miscellaneous other sources.

SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

Under 5 U.S.C. 552a(j)(2), the Office of the Inspector General Investigative Files are exempted from 5 U.S.C. 552a except subsections (b), (c)(1), and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) to the extent the system of records pertains to the enforcement of criminal laws. Under 5 U.S.C. 552(k)(2), the Office of the Inspector General Investigative Files are exempted from 5 U.S.C. 552a except subsections (c)(3), (d), (e)(10), (e)(4)(G), (H), and (I) and (f) to the extent the system of records consists of investigatory material compiled for law enforcement purposes. These exemptions are contained at 17 CFR 146.13.

**CFTC–33**

SYSTEM NAME:

Electronic Key Card Usage.

SYSTEM LOCATION:

Office of Administrative Services, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Authorized key card holders, which may include CFTC employees, on-site contractors, visitors, or representatives of landlords.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computer print-outs showing key card number, usage date and time and, in some cases, name of assigned user.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 2(a)(2)(A)(b) and 12(b)(3), Commodity Exchange Act, 7 U.S.C. 4a(e) and 16(b)(3).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the Commission's ''General Statement of Routine Uses,'' Nos. 1, 2, 6 and 7. In addition, information contained in this system may be disclosed by the Commission (1) to any person in connection with architectural, security or other surveys concerning use of office space and (2) to employees and contractors for the purpose of maintenance or service of data processing systems.

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

STORAGE:

Paper records in file folders, computer diskettes and computer files.

RETRIEVABILITY:

By name of the subject, by assigned key card number, by time period and by entry point.

SAFEGUARDS:

Information from the Commission's landlords' data bases may be requested from the landlords only by the Director of the Office of Administrative Services, or his/her designee. The Commission maintains all key card usage records in limited access areas at all times.

RETENTION AND DISPOSAL:

In accordance with the general record schedules and the Commission's record management handbook the records in the system are considered temporary and are destroyed when no longer required.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Administrative Services, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether the system of records contains information about themselves, seeking access to records about themselves in the system of records or contesting the content of records about themselves should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. The system of records and the notification, access and challenge procedures apply only to records of key card usage in the Commission's actual possession. None of these applies to any information solely in a landlord's possession.

RECORD SOURCE CATEGORIES:

With one exception, information in the system is supplied by the Commission's landlords, typically on request. Information supplied is a record of use of electronic key cards and in that sense the information is obtained directly from the users of the key cards. Information in the database maintained in Chicago by the Commission itself is also merely recorded usage of electronic key cards and similarly is obtained directly from the user of the key card.

**CFTC–34**

SYSTEM NAME:

Telephone System.

SYSTEM LOCATION:

Monthly billing records for local toll calls, long distance calls, and calling card calls are located in the Office of Administrative Services, Commodity Futures Trading Commission. Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. The most current record of the phone numbers and calling card numbers assigned to individual employees and contractors is kept by the administrative office in each regional location except Los Angeles. Los Angeles telephone assignment records are kept in the Washington, DC, Office of Administrative Services.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individauls (generally Commission employees and on-site contractor personnel) who make telephone calls from Commission telephones or use government issued calling cards.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to the use of Commission telephones or calling cards

to place calls; records indicating assignment of telephone or calling card numbers to employees; and records relating to requests for telephone call detail information.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301 and 41 CFR part 101–35.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

See the Commission's ''General Statement of Routine Uses,'' Nos. 1 and 2. In addition, records and data may be disclosed as necessary (1) to representatives of the General Services Administration or the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 4906; (2) to a telecommunications company or consultant providing telecommunications support to permit servicing the account .

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

**STORAGE:**

Records are stored on computer printouts.

**RETRIEVABILITY:**

Records are retrievable by a Commission telephone or calling card number that is assigned to an individual.

**SAFEGUARDS:**

In addition to general building security, records are maintained in limited access areas at all times.

**RETENTION AND DISPOSAL:**

In accordance with the general record schedules and the Commission's record management handbook, the records in the system are considered temporary and are destroyed when no longer required, usually every three months.

**SYSTEM MANAGERS AND ADDRESS:**

Director, Office of Administrative Services, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether the system of records contains information about themselves, seeking access to records about themselves in the system of records or contesting the content of records about themselves should address written inquiries to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

**RECORD ACCESS PROCEDURES:**

See ''Notification Procedures,'' above.

**CONTESTING RECORD PROCEDURES:**

See ''Notification Procedures,'' above.

**RECORD SOURCE CATEGORIES:**

Telephone and calling card assignment records; call detail listings received from local and long distance service providers; results of administrative inquiries relating to assignment of responsibility for placement of specific long distance calls.

## CFTC 35

**SYSTEM NAME:**

Interoffice and Internet E-Mail System.

**SYSTEM LOCATION:**

File servers in each system location (Washington, DC, Chicago, New York, Kansas City, Minneapolis, and Los Angeles) retain records. Records are backed up nightly onto magnetic tape in all locations except Minneapolis. Records are backed up weekly onto magnetic tape in the Minneapolis office. The most recent two weeks of tapes are kept in locked boxes in the Washington, DC, and Chicago locations. Tapes with information covering the prior two weeks are kept at an off-site storage facility in Washington, DC, and Chicago. Tapes with information covering the most recent four-week period are kept on-site, in a secured area, in the New York, Kansas City, Los Angeles, and Minneapolis locations.

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

All CFTC employees and on-site contractors.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records on the use of the interoffice and Internet e-mail system, including address of sender and receiver(s), subject, date sent or received, name of attachment and certification status. On a restricted basis, records may include the contents of an individual's mailbox.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301 and section 12(b)(3) of the Commodity Exchange Act, 7 U.S.C. 16(b)(3).

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

The records are used by CFTC network administrators who have a need for the records in the performance of their duties. See also the Commission's ''General Statement of Routine Uses,'' Nos. 1, and 2. In addition, the records and data, other than the content of individual mailboxes, may also be disclosed as necessary to contractors as necessary for assessment, modification, or maintenance of the e-mail system.

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

**STORAGE:**

Records are stored on the file servers in each CFTC location. Servers are backed up nightly and the information is transferred to magnetic tape. In Washington, DC, and Chicago, the most recent two weeks of magnetic tape are kept in a locked box in the Computer Room. The prior two weeks are kept at an off-site storage facility in Washington, DC, and Chicago. The entire four weeks of magnetic tape information is kept in unlocked boxes in a secured area in the New York, Kansas City, Los Angeles and Minneapolis locations.

**RETRIEVABILITY:**

The information can be retrieved by assigned interoffice or Internet mail address.

**SAFEGUARDS:**

Only network administrators have access to the e-mail information. This access is generally limited to the ''header'' information described under ''Categories of Records.'' The tapes are kept in locked storage boxes in Washington, DC, and Chicago, and only network administrators and OIRM management have keys to the locked boxes. In the New York, Kansas City, Los Angeles and Minneapolis locations, tapes are kept in unlocked boxes, either stored in a fireproof safe or vault. Only designated office personnel have access to the safe or vault.

**RETENTION AND DISPOSAL:**

Records on magnetic tape are retained for four weeks, then destroyed as the tape is written over with new information. Records are retained on the file server until the sender and receiver delete the information from the e-mail system. Internet e-mail information that is received by the postmaster due to an error in delivery is considered temporary and is destroyed after the problem is corrected.

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

Network Manager, Commodity Futures Trading Commission, Three

Lafayette, Centre, 1155 21st Street NW., Washington, DC 20581.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether the system of records contains information about themselves, seeking access to records about themselves in the system of records, or contesting the content of records about themselves should address written inquiries to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette, Centre, 1155 21st Street NW., Washington, DC 20581.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORDS PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Internet e-mail, interoffice e-mail.

**CFTC 36**

SYSTEM NAME:

Internet Website and News Group Browsing System.

SYSTEM LOCATION:

Firewall software, located on a PC in the Office of Information Resources Management, Commodity Futures Trading Commission, Three Lafayette, Centre, 1155 21st Street NW., Washington, DC 20581. Information on use of each personal computer is stored on that computer.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All CFTC employees and on-site contractors who are users of the Internet Website and New Group Browsing capability.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records on the websites and news groups visited, as identified by the Internet protocol address assigned to each computer, as well as information on the date and time of the website or news group access.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and section 12(b)(3) of the Commodity Exchange Act, 7 U.S.C. 16(b)(3).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records are used by CFTC network administrators for maintenance of the firewall system that protects the CFTC from unauthorized access to its data. The network administrators may also use the information to evaluate the level of use of the agency's Internet browsing capability. See also the Commission's ''General Statement of Routine Uses,'' Nos. 1, and 2. Records may also be disclosed as necessary to the agency's Internet service provider or agency contractor to the extent that the information is necessary for maintenance of the agency's Internet access.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETRAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are kept on the software maintained on the firewall gateway server in the headquarters computer room. In addition, a record of the Internet browsing done on each computer is maintained on that PC. The length of time of storage on the firewall gateway server is governed by available disk space on the server. At current levels of browsing usage, the information is stored on the server for approximately three days. Information on websites visited by each PC is also stored in the PC's history file or cache directory. The information is stored on the individual PC until the cache directory consumes 1% of total disk space. Oldest items are then removed until the directory is equal to or less than 1% of the total disk space. History file records are maintained until 100 URLs are entered. (URL stands for ''Uniform Resource Locator'' and is the address of the site visited, for example, http://www.cftc.gov.) The oldest URLs are deleted until the total URL count is equal to or less than 100 entities.

RETRIEVABILITY:

The information can be retrieved by Internet protocol address. The network administrators have access to information about the office location and individuals assigned to each computer, as identified by Internet protocol address.

SAFEGUARDS:

Network administrators, through use of a password protection, have access to the Internet web browsing system information that is stored on the firewall gateway server in the headquarters computer room. Access to the computer room is limited to OIRM employees. The Director of OIRM may grant the Commission's Internet service provider access to the Internet web browsing system information for maintenance purposes. However, the provider, would not have access to the information that links Internet protocol addresses to particular computers, locations and individuals.

RETENTION AND DISPOSAL:

Records are retained on the Commission's firewall software for approximately three days, then over written.

SYSTEM MANAGER(S) AND ADDRESS:

Network Manager, Commodity Futures Trading Commission, Three Lafayette, Centre, 1155 21st Street NW., Washington, DC 20581.

NOTIFICATION PROCESS:

Individuals seeking to determine whether the system of records contains information about themselves, seeking access to records about themselves in the system of records, or contesting the content of records about themselves should address written inquiries to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette, Centre, 1155 21st Street NW., Washington, DC 20581.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORDS PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Internet, website and news group browsing, website access.

**CFTC 37**

SYSTEM NAME:

Lexis/Westlaw Billing Information System.

SYSTEM LOCATION:

Office of Information Resources Management, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All CFTC employees and on-site contractors who are users of the Lexis/Westlaw research system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records on the name, search subject, database searched, date, elapsed time, type of charge, and total charge for a search in the Lexis/Westlaw automatic research system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and sec. 12(b)(3) of the Commodity Exchange Act, 7 U.S.C. 16(b)(3).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records are used primarily by the Administrative Officer, OIRM, to

monitor expenditures and to ensure the availability of funds. The records containing usage information are distributed monthly to the administrative officers in each office for their confirmation that Lexis/Westlaw use was authorized. See the Commission's ''General Statement of Routine Uses,'' Nos. 1 and 2. Lexis/Westlaw can also access the information and uses it for statistical analysis and billing purposes.

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

**STORAGE:**

Billing information is maintained by the Administrative Officer, OIRM, in a locked file drawer.

**RETRIEVABILITY:**

By division, by month of use, by database accessed, by user name and user identification number. Retrieval is done manually.

**SAFEGUARDS:**

Billing information is kept in locked desks at all times. Information is provided only to the Administrative Officer, OIRM, and is circulated to the administrative officer for each office.

**RETENTION AND DISPOSAL:**

Hard copies of monthly billing statements are retained for two years, then destroyed.

**SYSTEM MANAGERS AND ADDRESS:**

Administrative Officer, Office of Information Resources Management, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether the system of records contains information about themselves, seeking access to records about themselves in the system of records, or contesting the content of records about themselves should address written inquiries to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

**RECORD ACCESS PROCEDURES:**

See ''Notification Procedures'' above.

**CONTESTING RECORDS PROCEDURES:**

See ''Notification Procedures'' above.

**RECORD SOURCE CATEGORIES:**

Lexis/Westlaw billing information.

**CFTC 38**

**SYSTEM NAME:**

Automated Library Circulation System.

**SYSTEM LOCATION:**

Library, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

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

Individual CFTC employees who check out books and periodicals from the CFTC Library.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records showing the bar code assigned to employees who use the library, title, due date, and hold information on library materials checked-out by individual CFTC employees; records of overdue materials and of employee notification of overdue materials.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301 and 41 CFR part 101–27.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The Library staff uses the information to track the location of library materials, to provide users on request with a list of materials currently shown as in their possession, and to issue, as necessary, overdue notices for materials. See the Commission's ''General Statement of Routine Uses,'' Nos. 1 and 2. The records may also be disclosed as necessary to agency contractors in connection with assessment, modification or maintenance of the automated circulation system.

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

**STORAGE:**

Records are stored on the CFTC local area network file server. Records on the identifying bar codes assigned to individuals are stored in the file server on Rolodex cards.

**RETRIEVABILITY:**

Records are retrievable by employee name or by the employee's bar code number.

**SAFEGUARDS:**

Records may be assessed only by authorized CFTC staff members, who are principally staff of the Library or the Office of Information Resources Management. Staff members must use an individual password to gain access to the information stored in the computer.

**RETENTION AND DISPOSAL:**

Records in the system are considered temporary. The records of library transactions are destroyed when an item on loan is returned or reimbursement is made for replacement of the item.

**SYSTEM MANAGERS(S) AND ADDRESS:**

Administrative Librarian, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether the system of records contains information about themselves, seeking access to records about themselves in this system of records, or contesting the content of records about themselves should address written inquiries to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

**RECORD ACCESS PROCEDURES:**

See ''Notification Procedures'' above.

**CONTESTING RECORDS PROCEDURES:**

See ''Notification Procedures'' above.

**RECORD SOURCE CATEGORIES:**

Library user bar code identifiers; library materials use; overdue notices.

Issued in Washington, DC, on June 15, 1999 by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 99–15719 Filed 6–23–99; 8:45 am]

**BILLING CODE 6351–01–M**

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

### Intent To Prepare an Environmental Impact Statement/Report/Feasibility Study for the White Slough Flood Control Study, City of Vallejo, Solano County, CA

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** The purpose of the feasibility study is to identify and evaluate alternatives which will lead to flood protection for areas adjacent to White Slough, south of Highway 37 in Vallejo. To fulfill the requirements of Section 102(2)(c) of the National Environmental Policy Act, the Corps of Engineers has determined that the proposed action may have significant effect on the quality of the human environment and

therefore requires the preparation of an Environmental Impact Statement. This document will also serve as the Environmental Impact Report (EIR) under the California Environmental Quality Act (CEQA). Lead Agency under CEQA is the Vallejo Sanitation and Flood Control District. This environmental assessment is required by the National Environmental Policy Act of 1969, as amended (PL 91–190). Section 102(2)(A) requires Federal agencies to: ''Utilize a systematic interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and decision making which may have an impact on man's environment.''

**FOR FURTHER INFORMATION CONTACT:** Written comments and questions regarding the scoping process or preparation of the EIS/EIR/FS may be directed to Craig Vassel, U.S. Army Corps of Engineers, San Francisco District, 333 Market Street, 717P, Seventh Floor, San Francisco, CA 94105–2197, (415) 977–8546, Fax: 415–977–8695, Email: *cvassel@smtp.spd.usace.army.mil.*

**SUPPLEMENTARY INFORMATION:**

**1. Authority**

Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the California Environmental Quality Act (CEQA), the Department of the Army and Vallejo Sanitation and Flood Control District hereby give notice of intent to prepare a joint Environmental Impact Statement/Environmental Impact Report/Feasibility Study (EIS/EIR/FS) for the White Slough Flood Control Project, Solano County, California.

**2. Comments/ Scoping Meetings**

Interested parties are requested to express their views concerning the proposed activity. The public is encouraged to provide written comments in addition to or in lieu of, oral comments at the scoping meeting. To be most helpful, scoping comments should clearly describe specific environmental topics or issues, which the commentator believes the document, should address. Oral and written comments receive equal consideration. Two workshop-scoping sessions will be held on Wednesday July 7, 1999. The first 2:30–4:30 is intended primarily for local, state, and federal agencies and organizations. The second 7:00–9:00 is intended for all interested parties. Both meetings will be at the offices of the Vallejo Sanitation and Flood Control District Offices, 450 Ryder Avenue, Vallejo, CA.

**3. Availability of EIS/EIR/FS**

The Draft EIS/EIR/FS should be available for public review in Fall 1999.

**4. Agencies Supporting Project.**

The U.S. Army Corps of Engineers and Vallejo Sanitation and Flood Control District will be the lead agencies in preparing the combined EIS/EIR/FS. The EIS/EIR/FS will provide an analysis supporting both the requirements of NEPA and CEQA in addressing impacts to the environment which may result from implementation of flood control measures.

**5. Purpose and Need for Project:**

This project is intended to reduce the risk of flooding from all sources in the vicinity of White Slough, south of Highway 37 in Vallejo.

**6. Study Area Description**

White Slough is bisected by Highway 37. The southern portion, south of Highway 37 which is part of the Slough or subject and flooding is the study area for this project.

**7. Levee Construction History**

a. Located between the Napa River and the City of Vallejo, White Slough receives both tidal flow from the Napa River and fluvial flow from Chabot and Austin Creeks. Around 1900, local interests constructed a levee along the east bank of the Napa River, which allowed for the reclamation of approximately 816 acres of wetlands adjacent to White Slough; 604 acres west of Highway 37 and 212 acres southeast of Highway 37.

b. After floods breached these levees in 1964 and 1969, the Corps of Engineers subsequently repaired them. The 1969 repairs were performed under the authority of Public Law 81–875, which requires that local interests maintain the repaired levees. Floods again breached the levees in the winters of 1976, 1977, and 1978. This time, since inspections indicated that little or no levee maintenance had been done by local interests since they were last repaired in 1969, the Corps of Engineers had no authority to repair the levees. The land owners of property protected by the levees refused to make repairs without a guarantee that they could develop their land. During this period, the Bay Conservation and Development Commission (BCDC) claimed jurisdiction over the White Slough area. Little activity has occurred within the White Slough area in the intervening years.

**8. Austin Creek**

Austin Creek flows in an unlined channel along the southern perimeter of White Slough. Flow in this channel is carried by three road culverts. Because Austin Creek is separated from White Slough by a low levee (six feet NGVD), it can only be drained by the Austin Creek Pump Station.

**9. 1983 Tidal Flooding**

In 1983, a tide in excess of the 100-year event, combined with storm runoff, caused extensive flooding in the vicinity of White Slough. The Austin Creek Channel levee was overtopped, and flooding occurred on Sacramento Street, Sonoma Boulevard, and in the Larwin Plaza and K-Mart areas. After this event, the Austin Creek levee was raised by about three feet on the outboard side to protect the Sacramento Street area against tidal flooding. Today, the only tidal flooding protection in the White Slough area is provided by an emergency levee along the northern side of Highway 37, constructed by the City of Vallejo.

**10. Fluvial Flooding Problem**

Austin Creek's overtopping is the primary cause of fluvial flooding. The Austin Creek Pump Station provides adequate outlet capacity for three to five year fluvial flood events, but the channel and road crossing culverts do not convey flow to the pumps fast enough. During past flood events, the pump station pumped the immediate upstream channel reach nearly dry, while water was still ponding to significant depths behind the Redwood Street and Valle Vista Street culverts. Backwater conditions and obstruction by debris greatly reduce the capacities of the bridge culverts at Redwood Street and Valle Vista Avenue. The 100-year design flow of 1583 cfs significantly exceeds channel and culvert capacities regardless of backwater conditions.

**11. Highway 37 Project**

Caltrans' will use fill to raise and widen the highway and install additional culverts with tide gates under Highway 37. This will provide limited tidal exchange and tidal flood protection to the highway and the study area south of the highway subject to tidal flooding.

**12. Project Alternatives**

*a. No action.* This alternative assumes that no flood control project, structural or non-structural, other than the Highway 37 project, will be

implemented in the project area by the federal government or any other entity. Flooding would continue at the same frequency and intensity as it has in the past. Tidal flooding would be controlled by the Caltrans Highway 37 project. Inadequately protected areas around White Slough would continue to risk flood damage.

*b. Flood Control Alternatives.* Preliminary flood damage reduction alternatives studied for the White Slough and Austin Creek areas fall into two categories: Tidal and fluvial.

**13. Tidal Flood Protection From Highway 37**

Tidal flood protection to the highway and to those portions of the study area south of the highway subject to tidal flooding will be provided by Caltrans' Highway 37 improvement project. The project includes using fill to raise and widen Highway 37. Four additional 48-inch diameter culverts with tide gates under Highway 37 will limit tidal exchange to provide tidal flood protection. Levee protection would be required in areas where the existing tidal barrier falls below the 100-year tidal flood event.

**14. Fluvial Alternatives.**

Several alternatives to control fluvial flooding will be considered:

*a. Retention ponds.* Two retention ponds, each 10 feet deep, would be constructed on vacant land adjacent to Austin Creek just west of Sonoma Boulevard, creating a total of 60 acre-feet of storage upstream of Valle Vista Avenue. Storage of floodwater does not occur naturally at this site; therefore, any storage would have to be developed through excavation of native material and artificial fill on the property. Flow diverted into the basins would then drain by gravity back into the channel at a slower rate.

*b. Bridge improvements.* To decrease backwater conditions caused by obstructions; thereby increasing the capacity of Austin Creek, bridge improvements are being considered as well as removal of the abandoned culvert structure between Redwood Street and Highway 37. New pipes could be added to existing culvert bridge structures at Redwood Street and Valle Vista Avenue, or the existing culvert structures replaced with larger box culverts or clear span bridges.

*c. Pump station improvements.* The pump station at Austin Creek is limited in capacity. Any alternative which increases the capacity of Austin Creek could require an upgrading of the Austin Creek Pump Station, or a diversion of Austin Creek storm flow to a storage facility, such as White Slough, for retention.

*d. Austin Creek flow diversion.* If excess flows in Austin Creek above the Redwood Street and Valle Vista Avenue bridges are diverted, this could eliminate or reduce the need to upgrade the bridges. To divert these flows, a 2400-foot parallel pipe system would carry flows from the basin above Austin Creek directly into White Slough a clear passage of flow from Austin Creek into White Slough by removal of the levee system along the eastern bank of Austin Creek between Redwood Street and Highway 37, or directly into Austin Creek below Valle Vista Avenue or Redwood Street. This diversion structure could be combined with creation of a confluence between Austin Creek and White Slough. If White Slough received excess flows from Austin Creek during high flow periods, the existing Austin Creek Pump Station could then drain White Slough. The best location for such a confluence appears to be along the levee that separates Austin Creek from White Slough. Controllable gates could be installed within the barrier separating Austin Creek from White Slough.

*e. Austin Creek Creekside protection.* Levees or floodwalls by themselves or in combination with other improvement options may also be used to increase the capacity of the Austin Creek channel. This alternative does not address the causes of flooding, but merely contains the flow within Austin Creek.

*f. Removal of levees/restore confluence of Austin Creek and White Slough.* 1000 lineal feet of levee along the east bank and 1000 lineal feet of floodwalls on the west bank of Austin Creek between Redwood Street and Valle Vista and 1500 lineal feet of floodwalls on both banks of Austin Creek extending from Valle Vista Avenue to the upstream?would create a clear passage of flow in Austin Creek from Redwood Street to Highway 37.

*g. Perimeter flood protection.* 2000 lineal feet of floodwall and 2500 feet of levee along the perimeter of White Slough south of Highway 37, 1000 lineal feet of levee along the east bank and 1000 lineal feet of floodwalls on the west bank of Austin Creek between Redwood Street, and Valle Vista and 1000 lineal feet of floodwalls on both banks of Austin Creek extending from Valle Vista Avenue to the downstream limit of the retention ponds would be constructed.

**15. Feasibility Study**

The five-phase Feasibility Study will identify and evaluate measures to restore lost tidal prism and reduce the rate of sedimentation as follows:

a. Phase One will investigate existing physical and environmental conditions restoration needs and constraints of the area. The future without-project conditions in the study area will be projected. Input on the ecosystem will be sought from resource agencies and the public. Public scoping workshops will be held both in Vallejo.

b. During Phase Two, hydraulic modeling of the preliminary alternatives will be completed and economics and environmental impacts studied.

c. In Phase Three, preliminary alternatives will be evaluated and benefits of the alternatives will be quantified. A draft Fish and Wildlife Coordination Act Report possibly including a Habitat Evaluation Procedure (HEP) will be prepared to help provide the basis for identifying the most cost-effective alternative acceptable to the agencies and community.

d. Phase Four involves preparing the draft Feasibility Report and Environmental Impact Statement/Report (EIS/R). The EIS/R will analyze all reasonable alternatives and evaluate compliance with federal and state environmental requirements. A formal public review and comment period will be started.

e. The last phase of the study includes preparing the final Feasibility Report recommending a preferred alternative and completing the final EIS/R which will respond to all comments on the draft EIS/R.

**16. Other Environmental Review and Consultation Requirements**

The DEIS/R will be used as the primary information document to secure concurrence in a Federal Coastal Zone Consistency Determination to comply with Clean Water Act Section 404 (b) (1) guidelines, the Fish and Wildlife Coordination Act, and the Endangered Species Act. The DEIS/R will be used by the local sponsor to meet its responsibilities under the California Environmental Quality Act, and used by the San Francisco Regional Water Quality Control Board to meet its responsibilities under the Porter-Cologne Act. The DEIS/R will be used for ''trustee agency'' reviews by the State of California.

**17. DEIS Availability**

The DEIS will be available to the public in Fall 1999.

**Peter T. Grass,**

*LTC, EN, Commanding.*

[FR Doc. 99–16145 Filed 6–23–99; 8:45 am]

BILLING CODE 3710–19–P

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Availability of Government-Owned Inventions for Licensing

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

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy.

**ADDRESSES:** Copies of patents cited are available from the Commissioner of Patents and Trademarks, Washington, DC 20231, for $3.00 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $6.95 each ($10.95 outside North American Continent). Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the copies of patent applications sold to avoid premature disclosure.

**SUPPLEMENTARY INFORMATION:** The following patents and patent applications are available for licensing:

Patent 5,763,066: Nonlinear Optical Inclusion Complexes; filed 14 June 1995; patented 9 June 1998.//Patent 5,780,569: Linear Carborane-(Siloxane or Silane)-Acetylene Based Copolymers; filed 7 November 1994; patented 14 July 1998.//Patent 5,781,063: Continuous-Time Adaptive Learning Circuit; filed 6 November 1995; patented 14 July 1998./ /Patent 5,793,787: Type II Quantum Well Laser With Enhanced Optical Matrix; filed 16 January 1996; patented 11 August 1998.//Patent 5,800,123: Bladed Pump Capstan; filed 20 March 1997; patented 1 September 1998.// Patent 5,801,560: System for Determining Time Between Events Using a Voltage Ramp Generator; filed 13 September 1995; patented 1 September 1998.//Patent 5,805,635: Secure Communication System; filed 17 March 1964; patented 8 September 1998.//Patent 5,808,741: Method for Remotely Determining Sea Surface Roughness and Wind Speed at a Water Surface; filed 26 June 1996; patented 15 September 1998.//Patent 5,812,267: Optically Based Position Location System for an Autonomous Guided Vehicle; filed 10 July 1996; patented 22 September 1998.//Patent 5,815,384: Transformer Which Uses Bi-Directional Synchronous Rectification to Transform the Voltage of an Input Signal Into an Output Signal Having a Different Voltage and Method for Effectuating Same; filed 14 May 1997; patented 29 September 1998.//Patent 5,815,803: Wideband High Isolation Circulator Network; filed 8 March 1996; patented 29 September 1998.//Patent 5,816,056: Cooling With the Use of a Cavitating Fluid Flow; filed 26 February 1997; patented 6 October 1998.//Patent 5,816,712: Elastomeric Cartridges for Attenuation of Bearing-Generated Vibration in Electric Motors; filed 14 February 1997; patented 6 October 1998.//Patent 5,818,141: Squirrel Cage Type Electric Motor Rotor Assembly; filed 5 September 1996; patented 6 October 1998.//Patent 5,818,585: Fiber Bragg Grating Interrogation System With Adaptive Calibration; filed 28 February 1997; patented 6 October 1998.//Patent 5,818,601: Wavelength Independent Optical Probe; filed 4 October 1996; patented 6 October 1998.//Patent 5,818,940: Switching Matrix; filed 22 November 1972; patented 6 October 1998.// Patent 5,819,315: Faired Athletic Garment; filed 13 August 1997; patented 13 October 1998.//Patent 5,819,632: Variable-Speed Rotating Drive; filed 28 April 1996; patented 13 October 1998./ /Patent 5,819,676: Underwater Acoustic Search Angle Selection System and Method of Special Utility With Submerged Contacts; filed 30 June 1997; patented 13 October 1998.//Patent, 5,820,109: Remotely Operated Lift System for Underwater Salvage; filed 19 July 1996; patented 13 October 1998.// Patent 5,821,418: Cooled Fixture for High Temperature Accelerometer Measurements; filed 28 April 1996; patented 13 October 1998.// Patent 5,821,447: Safety and Arming Device; filed 24 August 1995; patented 13 October 1998.//Patent 5,821,475: Venturi Muffler With Variable Throat Area; filed 8 May 1996; patented 13 October 1998.//Patent 5,821,659: Homopolar Transformer for Conversion of Electrical Energy; filed 14 August 1997; patented 13 October 1998.//Patent 5,822,047: Modulator Lidar System; filed 29 August 1995; patented 13 October 1998.//Patent 5,822,111: Apparatus and Method for Coherent Acousto-Optic Signal Width Modification; filed 3 May 1995; patented 13 October 1998.//Patent 5,822,271: Submarine Portable Very Low Frequency Acoustic Augmentation System; filed 1 April 1998; patented 13 October 1998.//Patent 5,822,272: Concentric Fluid Acoustic Transponder; filed 13 August 1997; patented 13 October 1998.//Patent 5,824,512: Bacteria Expressing Metallothionein Gene Into the Periplasmic Space, and Method of Using Such Bacteria in Environment Cleanup; filed 22 November 1996; patented 20 October 1998.//Patent 5,824,803: Compounds Labeled With Cyanate or Thiocyanate Metal Complexes for Detection By Infrared Spectroscopy; filed 30 September 1997; patented 20 October 1998.//Patent 5,824,911: Fluid Pressure Measuring Device Interface; filed 10 July 1997; patented 20 October 1998.//Patent 5,824,946: Underwater Search Angle Selection System and Method of Special Utility With Surface Contacts; filed 30 June 1997; patented 20 October 1998.// Patent 5,825,040: Bright Beam Method for Super-Resolution in E-Beam Lithography; filed 23 December 1996; patented 20 October 1998.//Patent 5,825,489: Mandrell Based Embedded Planar Fiber-Optic Interferometric Acoustic Sensor; filed 28 February 1994; patented 20 October 1998.//Patent 5,826,883: Sealing Ring With deformable Tubular Sheath Filled With Permanent Magnetic Granules and Method of Making the Same; filed 16 September 1996; patented 27 October 1998.//Patent 5,827,748: Chemical Sensor Using Two-Dimensional Lens Array; filed 24 January 1997; patented 27 October 1998.//Patent 5,828,118: System Which Uses Porous Silicon for Down Converting Electromagnetic Energy to an Energy Level Within the Bandpass of an Electromagnetic Energy Detector; filed 6 March 1997; patented 27 October 1998.//Patent 5,828,207: Hold-up Circuit With Safety Discharge for Preventing Shutdown By Momentary Power Interruption; filed 20 April 1993; patented 27 October 1998.//Patent 5,828,571: Method and Apparatus for Directing a Pursuing Vehicle to a Target With Evasion Capabilities; filed 30 August 1995; patented 27 October 1998.//Patent 5,828,625: Echo Simulator for Active Sonar; filed 9 October 1997; patented 27 October 1998.//Patent 5,834,057: Method of Making Chemically Engineered Metastable Alloys and Multiple Components Nanoparticles; filed 28 June 1996; patented 10 November 1998.//Patent 5,835,978: Shoulder-Launched Multiple-Purpose Assault Weapon; filed 24 January 1997; patented 10 November

1998.//Patent 5,837,919: Portable Launcher; filed 5 December 1996; patented 17 November 1998.//Patent 5,838,021: Single Electron Digital Circuits; filed 26 December 1996; patented 17 November 1998.//Patent 5,838,428: System and Method for High Resolution Range Imaging With Split Light Source and Pattern Mask; filed 28 February 1997; patented 17 November 1998.//Patent 5,838,675: Channelized Receiver-Front-End Protection Circuit Which Demultiplexes Broadband Signals Into a Plurality of Different Microwave Signals in Respective Contiguous Frequency Channels, Phase Adjusts and Multiplexes Channels; filed 3 July 1996; patented 17 November 1998.//Patent 5,839,177: Pneumatic Rod Loading Apparatus; filed 3 August 1995; patented 24 November 1998.//Patent 5,839,290: Organic/Inorganic Composite Wicks for Capillary Pumped Loops; filed 24 January 1997; patented 24 November 1998.//Patent 5,839,700: Articulated Fin; filed 3 June 1996; patented 24 November 1998.//Patent 5,841,735: Method and System for Processing Acoustic Signals; filed 9 July 1997; patented 24 November 1998.// Patent 5,843,245: Process for Making Superplastic Steel Powder and Flakes; filed 26 March 1996; patented 1 December 1998.//Patent 5,844,052: Linear Metallocene Polymers Containing Acetylenic and Inorganic Units and Thermosets and Ceramics Therefrom; filed 14 March 1997; patented 1 December 1998.//Patent 5,844,161: High Velocity Electromagnetic Mass Launcher Having an Ablation Resistant Insulator; filed 3 April 1998; patented 1 December 1998./ /Patent 5,844,709: Multiple Quantum Well Electrically/Optically Addressed Spatial Light Modulator; filed 30 September 1997; patented 1 December 1998.//Patent 5,847,019: Photoactivatable Polymers for Producing Patterned Biomolecular Assemblies; filed 7 March 1997; patented 8 December 1998.//Patent 5,853,888: Surface Modification of Synthetic Diamond for Producing Adherent Thick and Thin Film Metallizations for Electronic Packaging; filed 25 April 1997; patented 29 December 1998.//Patent 5,854,440: Shoulder-Launched Multi-Purpose Assault Weapon; filed 20 June 1996; patented 29 December 1998.//Patent 5,854,587: RExM1-xMNyO Films for Microbolometer-Based IR Focal Plane Arrays; filed 26 June 1997; patented 29 December 1998.//Patent 5,854,865: Method and Apparatus for Side Pumping an Optical Fiber; filed 7 December 1995; patented 29 December 1998.//Patent 5,855,716: Parallel Contact Patterning Using Nanochannel Glass; filed 24 September 1996; patented 5 January 1999.//Patent 5,856,630: High Velocity Electromagnetic Mass Launcher Having an Ablation Resistant Insulator; filed 1 June 1994; patented 5 January 1999.// Patent 5,858,307: Hydrogen Sulfide Analyzer With Protective Barrier; filed 20 December 1995; patented 12 January 1999.//Patent 5,858,513: Channeled Ceramic Structure and Process for Making Same; filed 20 December 1996; patented 12 January 1999.//Patent 5,858,537: Compliant Attachment; filed 31 May 1996; patented 12 January 1999.//Patent application 08/048,101: Submerged Object Detection and Classification System; filed 16 April 1993.//Patent application 08/995,136: Bearing Assembly for Radar Mast; filed 19 December 1997.//Patent application 09/030,008: Preparation of Magnesium-Fluoropolymer Pyrotechnic Material; filed 25 February 1998.//Patent application 09/090,222: Missile Support and Alignment Assembly; filed 22 May 1998.//Patent application 09/156,379: Latency Verification System Within a Multi-Interface Point-to-Point Switching System (MIPPSS); filed 18 September 1998.//Patent application 09/156,614: Multi-Interface Point-to-Point Switching System (MIPPSS) With Hot Swappable Boards; filed 18 September 1998.// Patent application 09/157,002: Multi-Interface Point-to-Point Switching System (MIPPSS) With Rapid Fault Recovery Capability; filed 18 September 1998.//Patent application 09/157,023: Multi-Interface Point-to-Point Switching System (MIPPSS) Having an Internal Universal Signal Format; filed 18 September 1998.//Patent application 09/ 157,297: Multi-Interface Point-to-Point Switching System (MIPPSS); filed 18 September 1998.//Patent application 09/ 157,299: Multi-Interface Point-to-Point Switching System ((MIPPSS); filed 18 September 1998.//Patent application 09/ 162,150: Field Emission Tube for a Mobile X-Ray Unit; filed 29 September 1998.//Patent application 09/170,651: Multi-Warfare Area Launcher; filed 14 October 1998.//Patent application 09/ 170,971: Penetrating, Dual-Mode Warhead; filed 14 October 1998.//Patent application 09/176,932: Statistical Inference of Electromagnetic Interference Sources Based on a Priori Knowledge of Source and Receiver Parameters; filed 23 October 1998.// Patent application 09/184,636: Drill Guide for Combination Lock Mounting and Method for Using Drill Guide; filed 3 November 1998.//Patent application 09/189,676: High Authority Actuator; filed 13 November 1998.//Patent application 09/197,440: Gallium Arsenide Semiconductor Devices Fabricated With Insulator Layer; filed 23 November 1998.//

**FOR FURTHER INFORMATION CONTACT:** Mr. John G. Wynn, Staff Patent Attorney, Office of Naval Research (Code 00CC), Arlington, VA 22217–5660, telephone (703) 696–4004.

**Authority:** 35 U.S.C. 207, 37 CFR Part 404.

Dated: June 15, 1999.

**Ralph W. Corey,**

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

[FR Doc. 99–16102 Filed 6–23–99; 8:45 am]

**BILLING CODE 3810–01–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Meeting of the Chief of Naval Operations (CNO) Executive Panel

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

**ACTION:** Notice.

**SUMMARY:** The CNO Executive Panel is to conduct the final briefing of the Naval Warfare Innovation Task Force to the Chief of Naval Operations. This meeting will consist of discussions relating to the use of ''Red Teams'' and the process of transitioning programs from science and technology to development.

**DATES:** The meeting will be held on July 15, 1999 from 1:30 p.m. to 2:30 p.m.

**ADDRESSES:** The meeting will be held at the office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000.

**FOR FURTHER INFORMATION CONCERNING THIS MEETING CONTACT:** Commander Christopher Agan, CNO Executive Panel, 4401 Ford Avenue, Suite 601, Alexandria, Virginia 22302–0268, (703) 681–6205.

**SUPPLEMENTARY INFORMATION:** Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute information that relates solely to the internal rules and practices of the agency. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in 5 U.S.C. section 552(b)(2).

Dated: June 9, 1999.

**Ralph W. Corey,**

*Commander, Judge Advocate General's Corps, Federal Register Liaison Officer.*

[FR Doc. 99–16100 Filed 6–23–99; 8:45 am]

**BILLING CODE 3810–01–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Board of Advisors to the Superintendent, Naval Postgraduate School, Monterey, CA

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

**ACTION:** Notice.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App.2), notice is hereby given that the Board of Advisors to the Superintendent, Naval Postgraduate School, Monterey, California will meet. All sessions will be open to the public.

**DATES:** The meeting will be held on 27–28 July 1999, 8:30 a.m. to 5:00 p.m.

**ADDRESSES:** The meeting will be held in Hermann Hall, Building 220, Naval Postgraduate School, Monterey, California.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jaye Panza, Naval Postgraduate School, Monterey, California, 93943–5000, Telephone: (408) 656–2514.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to elicit the advice of the board on the Navy's Postgraduate Education Program. The board examines the effectiveness with which the Naval Postgraduate School is accomplishing its mission. To this end, the board will inquire into the curricula; instruction; physical equipment; administration; state of morale of the student body, faculty, and staff; fiscal affairs; and any other matters relating to the operation of the Naval Postgraduate School as the board considers pertinent.

Dated: June 15, 1999.

**Ralph W. Corey,**

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

[FR Doc. 99–16101 Filed 6–23–99; 8:45 am]

**BILLING CODE 3810–01–P**

## DEPARTMENT OF EDUCATION

**[CFDA No. 84.184H]**

### Office of Elementary and Secondary Education—Safe and Drug-Free Schools Program

**AGENCY:** Department of Education.

**ACTION:** Notice correcting application deadline date for fiscal year 1999.

**SUMMARY:** The Secretary corrects the deadline date for the receipt of applications for a grant under the State and Regional Coalition Grant Competition To Prevent High-Risk Drinking Among College Students (CFDA No. 84.184H) in the notice published on June 16,1999 at 64 FR 32366.

**DATES:** The deadline date for receipt of applications under this competition is corrected to be July 16, 1999.

**FOR FURTHER INFORMATION CONTACT:** Safe and Drug-Free Schools Program, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202–6123. Telephone: (202) 260–3954. FAX: (202) 260–7767. Internet: http://www.ed.gov/offices/OESE/SDFS.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g. Braille, large print, audio tape, or computer diskette) upon request to the contact office listed above.

**Authority:** 20 U.S.C. 7131.

Dated: June 21, 1999.

**Judith Johnson,**

*Acting Assistant Secretary for Elementary and Second Education.*

[FR Doc. 99–16144 Filed 6–23–99; 8:45 am]

**BILLING CODE 4000–01–M**

## DEPARTMENT OF ENERGY

### Availability of Solicitation for Advanced Technologies for Stripper Gas Well Enhancement

**AGENCY:** The Federal Energy Technology Center, Department of Energy, Pittsburgh.

**ACTION:** Notice of issuance of financial assistance solicitation.

**SUMMARY:** The U. S. Department of Energy's (DOE), Federal Energy Technology Center (FETC) announces that it intends to issue a competitive Program Solicitation (PS), No. DE–PS26–99PC40564 for the program entitled ''Advanced Technologies for Stripper Gas Well Enhancement''. Through this solicitation, DOE seeks to support applications for research and development of techniques, technologies, or methodologies which will improve the production performance of stripper gas wells. The proposed efforts must incorporate innovative field technologies for use in stripper gas wells to increase production, reduce operating costs, increase environmental compliance, or combinations thereof. These techniques or technologies would then be validated/demonstrated in at least two (2) verification wells. Applications will be subjected to a comparative merit review by a DOE technical panel, and awards will be made to a limited number of applicants on the basis of the scientific merit, application of relevant program policy factors, and the availability of funds.

**DATES:** The solicitation is expected to be ready for release by June 17, 1999 and will have three (3) separate closing dates for submission of applications. The first closing date will be on or about July 17, 1999; the second closing date on or about November 1, 1999; and the third closing date will be on or about March 31, 2000. It should be noted that applications will only be considered for the closing date for which they are submitted. Applications must be prepared and submitted in accordance with the instructions and forms in the Program Solicitation and prior to submitting applications, check for any changes (i.e. closing date of solicitation) and/or amendments, if any, through the Internet at FETC's Home Page <http://www.fetc.doe.gov/business>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jo Ann C. Zysk, U.S. Department of Energy, Federal Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–107, Pittsburgh, PA 15236; (Telephone: (412) 892–6200, FAX: (412) 892–6216, E-mail: zysk@fetc.doe.gov).

**ADDRESSES:** The solicitation will be available through the Internet at FETC's Home Page <http://www.fetc.doe.gov/business>. Telephone requests will not be accepted for any format version of the solicitation.

**SUPPLEMENTARY INFORMATION:** Through Program Solicitation No. DE–PS26–99PC40564, the Department of Energy seeks applications for ideas, technologies, or methodologies which would benefit the stripper gas industry; however, the effort must be economically and environmentally viable.

#### Eligibility

Eligibility for participation in this Program Solicitation is considered to be full and open and all interested parties may apply. Interested parties must also agree that data and information generated during the performance of the project will be transferred to the public. The solicitation will contain a complete

description of the technical evaluation factors and relative importance of each factor.

**Areas of Interest**

There are three areas of approaches sought: (1) Reservoir remediation; (2) wellbore cleanup; and (3) surface system optimization. Each of these areas could include subcategories. In the reservoir remediation area, such technologies could include: restimulation, explosive/propellants, extended-reach jetting technology, or identifying additional behind-pipe reserves. The wellbore clean-up area could include such things as perforation cleaning/re-opening, fluid removal, solids removal, or scale/salt removal. Under the surface system optimization area, low-pressure compression facilities, collection system optimization, and water disposal are a few ideas. This list is not all inclusive as there are other technologies which have not been mentioned.

**Awards**

DOE currently has available $287,000 for this solicitation with expectations of additional monies in FY2000. Out-year funding shall depend upon availability of future year appropriations. DOE anticipates multiple awards (i.e., between three (3) and six (6)) with a total project cost between $100,000–$150,000 and a project duration of eighteen (18) months or less. Under the research and development phase, a minimum 20% non-federal cost-share of the total estimated cost is required for all applications. A fifty (50) percent cost-share of total estimated cost is required for the validation/demonstration phase of the project. Collaboration between industry and academia is strongly encouraged.

Issued in Pittsburgh, Pennsylvania on June 16, 1999.

**Dale A. Siciliano,**

*Contracting Officer, Acquisition and Assistance Division.*

[FR Doc. 99–16080 Filed 6–23–99; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. GT99–37–000]**

## Boundary Gas, Inc.; Notice of GRI Refund Report

June 18, 1999.

Take notice that on June 16, 1999, Boundary Gas, Inc. (Boundary) tendered for filing a refund report reflecting the flowthrough of the Gas Research Institute (GRI) refund received by Boundary on May 28, 1999.

Boundary states that it has calculated refunds proportionally for its firm customers of non-discounted service based on the GRI surcharges those customers paid during calendar year 1998. Boundary states that it mailed each customer a check for its portion of the refund on or about June 14, 1999.

Boundary also states that copies of this filing were served upon each of Boundary's affected customers and the state commissions of New York, Connecticut, New Jersey, Massachusetts, New Hampshire, and Rhode Island.

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 on or before June 25, 1999. 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 in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–16044 Filed 6–23–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. ER99–2730–000 and EL99–67–000]**

## California Independent System Operator Corporation; Initiation of Proceeding and Refund Effective Date

June 18, 1999.

Take notice that on June 17, 1999, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL99–67–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL99–67–000 will be 60 days after publication of this notice in the **Federal Register**.

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–16077 Filed 6–23–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. OR99–16–000]**

## Colonial Pipeline Company; Notice of Petition for Declaratory Order

June 18, 1999.

Take notice that on June 15, 1999, pursuant to Rules 207(a)(2) and 212 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207.212, Colonial Pipeline Company (Colonial) tendered for filing a petition for a declaratory order regarding the proposed rates for transportation service to be provided through a planned new stub line connecting a point near Talladega, Alabama on Colonial's mainline, with Huntsville, Alabama and Murfressboro, Tennessee (just south of Nashville) (hereafter Talladega-to-Murfreesboro line).

Colonial states that with the Commission's approval of Colonial's rate proposal, the new line will be constructed beginning in the first quarter of 2000, with the goal of commencing service by January 1, 2001. Colonial requests expedited consideration of its petition, by November 1, 1999, in order to meet its projected in-service date. Colonial asserts that the new line will permit direct petroleum products pipeline service to Huntsville for the first time, and will significantly expand Colonial's capacity to serve the growing Nashville market, which is presently subject to substantial capacity constraints.

Colonial requests that the Commission issue an order declaring: (1) That the cancellation of Colonial's pre-existing rates to Nashville will not be subject to challenge when the new Talladega-to-Murfreesboro line goes into service; (2) that its indexed rates from Houston and other origins to Birmingham will not be subject to challenge as the result of the connection to the Talladega-to-Murfreesboro line; (3) that the Commission will accept the proposed initial joint rates for service to Huntsville and Nashville as listed in Exhibit C, column 5 to the filing; and (4) that the Talladega-to-Murfreesboro cost of service component of the overall rates to Huntsville and Nashville will not be subject to challenge except as provided

in the Commission's indexing regulations as applied to that particular segment.

Any person desiring to be heard or to protest 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 on or before July 15, 1999. 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 in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–16046 Filed 6–23–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. ER99–2770–000 and EL99–69–000]**

## Florida Power & Light Company; Initiation of Proceeding and Refund Effective Date

June 18, 1999.

Take notice that on June 17, 1999, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL99–69–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL99–69–000 will be 60 days after publication of this notice in the **Federal Register**.

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–16078 Filed 6–23–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 1494–171]**

## Grand River Dam Authority; Notice of Extension of Time

June 18, 1999.

On December 21, 1998, Grand River Dam Authority filed an application for approval of modified marina facilities, in the above-docketed proceeding. The proposed modifications include the relocation of a fuel dock from its approved location, about 845 feet from the northern shoreline to a new (present) location, about 130 feet from the northern shoreline. Further, the permittee proposed to replace four existing boat slips with a building containing a business office, bathhouse, and laundromat. The Pensacola Project is on the Grand River, in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma.

On June 4, 1999, the Commission issued a Notice of Availability of Draft Environmental Assessment (DEA) for the proposal (64 FR 31215, pub. June 10, 1999). The DEA was issued as a result of a review by the Office of Hydropower Licensing in accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47910). Copies of the DEA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371. The DEA may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance). In the DEA, staff concluded that approval of the proposed action, alternative actions, or the no-action alternative would not constitute a major Federal action significantly affecting the quality of the human environment.

Because of the interest shown by the public in this matter, the Commission is extending the time for the filing of comments on the project. By this notice, the time for the filing of comments is hereby extended to and including July 26, 1999. Comments should be addressed to Mr. David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 1494–171 to all comments. For further information, please contact the project manager, Jon Confrancesco at (202) 219–0079.

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–16051 Filed 6–23–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP99–552–000]**

## Northern Natural Gas Company; Notice of Application

June 18, 1999.

Take notice that on June 11, 1999, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP55–552–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon as nonjurisdictional facilities, by sale to McDay Energy Partners, Ltd. (McDay Energy), certain pipeline facilities, with appurtenances, located in Zavala and Dimmitt Counties, Texas (Zavala Facilities) and certain services rendered thereby. Northern also requests approval, concurrent with the conveyance of the Zavala Facilities, to abandon a rental compressor unit located at the Zavala County #3 Compressor Station, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Northern states that the Zavala Facilities consist of approximately 26 miles of 12-inch pipeline and appurtenant facilities, and that the facilities will be conveyed to McDay Energy for $1,700,000. Northern also states that, concurrent with the conveyance of the Zavala Facilities, Northern is proposing to abandon the 1,100 horsepower rental compressor unit located at the Zavala County #3 Compressor Station in-place.

Northern states that it is currently providing only interruptible transportation service on the Zavala Facilities on a month-to-month basis pursuant to Part 284 of the Commission's Regulations and rate schedules in Northern's FERC Gas Tariff, Fifth Revised Volume No. 1. Northern states that all transportation services related to the Zavala Facilities will be terminated by Northern effective on the effective date of the sale of the subject facilities to the McDay Energy.

Northern states that McDay Energy currently own gathering facilities connected to the Zavala Facilities. Northern further states that the Zavala Facilities, if owned and operated by McDay Energy, would provide an opportunity for the McDay Energy to more efficiently control its gathering operations in the area. In addition, Northern states that McDay Energy intend to file a petition for a declaratory order seeking a determination that the subject Zavala Facilities, once conveyed to McDay Energy, are gathering facilities exempt from the Commission's jurisdiction under Section 1(b) of the NGA.

Any questions regarding the instant application should be directed to either Michele Winckowski at (402) 398–7082 (mwincko@enron.com) or Glen Hass at (402) 398–7419 (ghass@enron.com), Northern Natural Gas Company, 1111 South 103rd Street, Omaha, Nebraska 68124

Any person desiring to be heard or to make any protest with reference to said application should on or before July 9, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, a motion to intervene or a protest 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 Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–16042 Filed 6–23–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. OR99–4–000]**

## Sinclair Oil Corporation v. Platte Pipe Line Company; Notice of Alternative Dispute Resolution Process

June 18, 1999.

Take notice that pursuant to the Commission's ''Order on Complaint'' issued on June 1, 1999 in this proceeding, 87 FERC ¶ 61,259 (1999), the parties have met with the Director of the Commission's Office of Dispute Resolution Services (Director), and have agreed upon an Alternative Dispute Resolution (ADR) process to resolve certain issues raised in the complaint of Sinclair Oil Corporation (Sinclair).

A principal goal of the ADR process is to determine whether, and how, to address the impact on Platte Pipe Line Company's (Platte's) common stream shippers who tender crude petroleum that is not mixed with natural gasoline, from receiving deliveries containing crude petroleum tendered by shippers that have mixed natural gasoline into their crude petroleum.

The parties have agreed upon a mediation process and will work toward resolution of this issue through mediation efforts commencing in June 1999 and concluding by the end of August 1999. Pursuant to the parties' agreement, Judge William J. Cowan has been appointed mediator.

At the conclusion of the ADR process, if successful, the parties will submit a settlement incorporating revised rules and regulations in pro forma tariff sheets that would, upon Commission approval, be submitted to the Commission as compliance filings, with general application on Platte's system.

Any person having both an interest in participating in the ADR process and an interest in Platte's rules and regulations within the standards established by 18 CFR 343.2(b) must notify the Director and other parties, in writing, no later than July 2, 1999 in order to participate.[1] Persons joining the ADR process will do so subject to the procedures already established by the mediator and this order.

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–16045 Filed 6–23–99; 8:45 am]

BILLING CODE 6717–01–M

[1] The Director is Richard L. Miles, who can be contacted at (202) 208–0702.

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP99–334–000]**

## Southern Natural Gas Company; Notice of Petition for Waiver

June 18, 1999.

Take notice that on June 14, 1999, Southern Natural Gas Company (Southern) filed a petition for an interim waiver of Section 14.1(b)(1) and 14.1(c)(1) of the General Terms and Conditions of its Tariff in order to waive cashout premiums incurred during May 1999.

Southern states that copies of the filing have been mailed to all of the shippers and interested state commissions.

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 on or before June 25, 1999. 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 in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–16050 Filed 6–23–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. GT99–36–000]**

## Viking Gas Transmission Company; Notice of Filing GRI Report

June 18, 1999.

Take notice that on June 14, 1999, Viking Gas Transmission Company (Viking) tendered for filing a report of Gas Research Institute (GRI) refunds to Viking for the period from January 1, 1998 to December 31, 1998. Viking states that the reported refunds were credited to Viking's customers on its May invoices that were mailed on June 11, 1999.

Viking states that copies of this filing have been mailed to all of its jurisdictional customers and to interested state commissions.

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 on or before June 25, 1999. 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 in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–16043 Filed 6–23–99; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP98–290–005]**

## Viking Gas Transmission Company; Notice of Filing Crediting Report

June 18, 1999.

Take notice that on June 15, 1999, Viking Gas Transmission Company (Viking) filed its IT Revenue Crediting Report for the period of November 1, 1998 through December 31, 1998.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory 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 June 25, 1999. 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 in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–16047 Filed 6–23–99; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP98–290–006]**

## Viking Gas Transmission Company; Notice of Filing

June 18, 1999.

Take notice that on June 15, 1999, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective January 1, 1999:

Seventh Revised Sheet No. 24
Third Revised Sheet No. 33
Sixth Revised Sheet No. 36
Third Revised Sheet No. 38
Seventh Revised Sheet No. 39
First Revised Sheet No. 87B
First Revised Sheet No. 87C

Viking states that the purpose of this filing is to comply with Article IV and Article V of the Stipulation and Agreement filed by Viking on March 16, 1999 in the above-referenced docket and approved by the Commission by order issued May 12, 1999.

Viking states that copies of this filing have been served on all parties designated on the official service list in this proceeding, on all Viking's jurisdictional customers and to affected state regulatory commissions.

Any person desiring to protest this 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 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 the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–16048 Filed 6–23–99; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP98–290–007]**

## Viking Gas Transmission Company; Notice of Filing Penalty Report

June 18, 1999.

Take notice that on June 15, 1999, Viking Gas Transmission Company (Viking) filed a report of penalty revenues and credits for the period November 1, 1998 through December 31, 1998.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

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 June 25, 1999. 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 in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–16049 Filed 6–23–99; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EG99–143–000, et al.]**

## Front Range Energy Associates, L.L.L., et al. Electric Rate and Corporate Regulation Filings

June 15, 1999.

Take notice that the following filings have been made with the Commission:

### 1. Front Range Energy Associates, L.L.L.

[Docket No. EG99–143–000]

Take notice that on June 11, 1999, Front Range Associates, L.L.C. (Front Range) tendered for filing with the Federal Energy Regulatory Commission an amendment to their application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Front Range is a Delaware limited liability company owned by Quixx Mountain Holdings, L.L.C., a Delaware limited liability company, and FR Holdings, L.L.C., a Colorado limited liability company. Front Range will initially own and operate a natural gas-fired simple cycle electric energy generation facility located on a site in Fort Lupton, Colorado, having a net design power output of approximately 164 MW.

*Comment date:* July 1, 1999, 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 amended application.

### 2. Colorado Energy Management, LLC

[Docket No. ER99–3104–000]

Take notice that on June 10, 1999, Colorado Energy Management, LLC, tendered for filing notice of withdrawal of its May 18, 1999, application for Order Accepting Initial Rate Filing, for Waiver of Regulation for Blanket Approvals and for Waiver of Notice in the above-referenced docket.

*Comment date:* June 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

### 3. PJM Interconnection, L.L.C.

[Docket No. ER99–3191–000]

Take notice that on June 10, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing executed service agreements for firm point-to-point transmission service and non-firm point-to-point transmission service for Transalta Energy Marketing (U.S.), Inc., under the PJM Open Access Transmission Tariff.

Copies of this filing were served upon the parties to the service agreements.

*Comment date:* June 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

### 4. South Carolina Electric & Gas Company

[Docket No. ER99–3192–000]

Take notice that on June 10, 1999, South Carolina Electric & Gas Company (SCE&G), tendered for filing a service agreement establishing Dayton Power and Light as a customer under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of one day subsequent to the date of filing. Accordingly, SCE&G requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Dayton Power and Light and the South Carolina Public Service Commission.

### 5. PJM Interconnection, L.L.C.

[Docket No. ER99–3193–000]

Take notice that on June 10, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing a signature page of Pepco Services, Inc., to the Reliability Assurance Agreement among Load Serving Entities in the PJM Control Area (RAA), and an amended Schedule 17 listing Pepco Services, Inc., as a party to the RAA.

PJM states that it served a copy of its filing on all parties to the RAA, including Pepco Services, Inc., and each of the electric regulatory commissions within the PJM Control Area.

*Comment date:* June 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

### 6. PJM Interconnection, L.L.C.

[Docket No. ER99–3194–000]

Take notice that on June 10, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing a notice that Fina Energy Services Company is withdrawing its membership in PJM.

PJM states that it served a copy of its filing on all of the members of PJM, including the withdrawing company, and each of the electric regulatory commissions within the PJM control area.

*Comment date:* June 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

### 7. Northeast Utilities Service Company

[Docket No. ER99–3195–000]

Take notice that on June 10, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with FPL Energy Power Marketing, Inc. (FPL), under the NU System Companies' System Power Sales/Exchange Tariff No. 6.

NUSCO requests that the Service Agreement become effective on June 1, 1999.

NUSCO states that a copy of this filing has been mailed to FPL.

*Comment date:* June 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

### 8. Northeast Utilities Service Company

[Docket No. ER99–3196–000]

Take notice that on June 10, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing a Second Amendment (Second Amendment) to the Memorandum of Understanding '' Pooling of Generation and Transmission among The Connecticut Light and Power Company, Western Massachusetts Electric Company (WMECO), Holyoke Water Power Company and Holyoke Power and Electric Company, dated as of June 1, 1970 and previously amended as of April 2, 1982 and currently on file with the Commission as FERC Rate Schedules CL&P No. 40, WMECO No. 52, and HWP No. 22 (the NUG&T). The NUG&T is an internal cost allocation agreement which allocates the costs and revenues associated with production and transmission costs among the signatory affiliated companies.

NUSCO states that recent changes brought about by restructuring of the New England Power Pool and of electricity markets in Massachusetts and Connecticut led to the need to amend the NUG&T. Specifically, NUSCO states that once WMECO load is served by a third party through a Standard Offer generation service arrangement, the allocation mechanism in the NUG&T will become unworkable.

NUSCO requests waiver of the Commission's Regulations to allow the Second Amendment to become effective on the first day of the month following the date that WMECO begins procuring the source of supply for Standard Offer generation service on a competitive basis.

*Comment date:* June 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

### 9. BIV Generation Company LLC

[Docket No. ER99–3197–000]

Take notice that on June 10, 1999, BIV Generation Company LLC (BIV), tendered for filing an application with the Federal Energy Regulatory Commission (Commission) requesting acceptance of BIV FERC Electric Rate

Schedule Nos. 1 and 2; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

BIV is seeking blanket approval to sell electric energy and capacity at market-based rates from the Brush 4 Cogeneration Facility, located in Brush, Colorado, to Public Service Company of Colorado under BIV FERC Electric Rate Schedule No. 1. BIV also requests that the Commission accept BIV FERC Electric Rate Schedule No. 2 so that BIV may make sales of energy and capacity from the Brush 4 Cogeneration Facility to third parties at market-based rates should the opportunity arise.

*Comment date:* June 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

**10. CP Power Sales Fifteen, L.L.C.**

[Docket No. ER99–3198–000]

Take notice that on June 10, 1999, CP Power Sales Fifteen, L.L.C., tendered for filing a Notice of Succession on behalf of CL Power Sales Fifteen, L.L.C. Effective May 18, 1999, CL Power Sales Fifteen, L.L.C., changed its name to CP Power Sales Fifteen, L.L.C.

*Comment date:* June 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

**11. CP Power Sales Fourteen, L.L.C.**

[Docket No. ER99–3199–000]

Take notice that on June 10, 1999, CP Power Sales Fourteen, L.L.C., tendered for filing Notice of Succession on behalf of CL Power Sales Fourteen, L.L.C. Effective May 18, 1999, CL Power Sales Fourteen, L.L.C., changed its name to CP Power Sales Fourteen, L.L.C.

*Comment date:* June 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

**12. CP Power Sales Twelve, L.L.C.**

[Docket No. ER99–3201–000]

Take notice that on June 10, 1999, CP Power Sales Twelve, L.L.C., tendered for filing a Notice of Succession on behalf of CL Power Sales Twelve, L.L.C. Effective May 18, 1999, CL Power Sales Twelve, L.L.C., changed its name to CP Power Sales Twelve, L.L.C.

*Comment date:* June 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

**13. Capital Center Generating Company, LLC**

[Docket No. ER99–3207–000]

Take notice that on June 11, 1999, Capital Center Generating Company, LLC (Capital Center), tendered for filing with the Federal Energy Regulatory Commission, pursuant to Rule 205, 18 CFR 385.205, and Section 35.12, 18 CFR 35.12 of the Commission's Regulations, an Application for Approval of Rate Schedules For Future Power Sales at Market-Based Rates and Waivers and Preapprovals of Certain Commission Regulations for Capital Center's Initial Rate Schedule FERC No. 1.

The proposed Rate Schedules would authorize Capital Center to engage in the wholesale sales of firm capacity and/or energy and non-firm capacity and/or energy and of ancillary services to eligible customers at market-based rates.

*Comment date:* July 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

**14. Illinova Power Marketing, Inc.**

[Docket No. ER99–3208–000]

Take notice that on June 11, 1999, Illinova Power Marketing, Inc., tendered for filing an application requesting approval of a proposed market-based rate tariff, waiver of certain regulations, and blanket approvals, and for specific approval of a power purchase agreement.

*Comment date:* July 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

**15. New York State Electric & Gas Corporation**

[Docket No. ER99–3217–000]

Take notice that on June 11, 1999, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Section 35.15 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.15, a notice of cancellation (Cancellation) of NYSEG Rate Schedules with Delmarva Power & Light Company; GPU Service Corporation, as Agent for Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company, d/b/a GPU Energy; Consolidated Edison Co. of New York, Inc.; and New York Power Authority.

NYSEG requests that the Cancellation be deemed effective as of August 10, 1999.

Notice of the proposed cancellation has been served upon each of the affected parties identified above.

*Comment date:* July 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

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, 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 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 these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–16052 Filed 6–23–99; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6366–2]**

## Agency Information Collection Activities: Proposed Collection; Comment Request; Permit Environmental Data From the Electric Arc Furnace/Steel Mini-Mill, Cement Kiln, and Paper & Pulp Mill Industries

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Permit Environmental Data from the Electric Arc Furnace/Steel Mini-Mill, Cement Kiln, and Paper & Pulp Mill Industries, EPA ICR Number 1908.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before August 23, 1999.

**ADDRESSES:** Air & Radiation Division, Region 5, United States Environmental Protection Agency, AR–18J, 77 W. Jackson Blvd., Chicago, IL 60604–3590

**FOR FURTHER INFORMATION CONTACT:** Kushal Som, Telephone Number: (312) 353–5792, E-Mail: som.kushal@epa.gov. Jennifer Lau, E-Mail: lau.jennifer@epa.gov.

**SUPPLEMENTARY INFORMATION:** Affected entities: Entities potentially affected by

this action are state agencies involved with regulating air emissions released during the production of steel, cement, paper, or pulp. Information not obtained from the states will be obtained from the steel, cement, paper, and pulp industries.

*Title:* Permit Environmental Data from the Electric Arc Furnace/Steel Mini-Mill, Cement Kiln, & Paper and Pulp Mill Industries, EPA ICR No. 1908.01.

*Abstract:* The RACT/BACT/LAER Clearinghouse (RBLC), found on the Technology Transfer page of the U.S.E.P.A Internet webpage, is administered by the Office of Air Quality & Planning Standards (OAQPS). This database consists of collected air emissions information based on either the Reasonably Available Control Technology (RACT), Best Available Control Technology (BACT), or Lowest Achievable Emission Rate (LAER). It is used by State, Local and Federal agencies to compare pending RACT, BACT and LAER determination limits and/or control technologies with existing facilities across the country.

While each state agency is requested to regularly update the RBLC, the database has a very limited record of air emission data for each industry. The RBLC database has proven to be an inadequate informational resource for state, local, or federal agencies to develop and review major or minor source permits.

Informational permit databases are essential to give permit writers and reviewers the access to necessary information to compare with their pending permit applications. The information collection will be conducted by Region 5 Air and Radiation Division of the U.S. EPA. The information will be requested through telephone calls and can be provided over the telephone or sent to the EPA by e-mail, U.S. Postal Service, or fax. Response to the information collection is voluntary. All the information will be compiled on databases accessible from Region 5's Air and Radiation Division webpage. Also, new information gathered will be submitted for input into the RBLC.

The required information consists of emissions data and other information that have been determined not to be private. However, any information submitted to the agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, Part 2, Subpart B—Confidentiality of Business Information (see 40 CFR 2; 41 FR 36902, September 1, 1976; amended by 43 FR 40000, September 8, 1978; 43 FR 42251, September 20, 1978; 44 FR 17674, March 23, 1979).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Burden Statement:* This ICR has an estimated respondent burden of 68.1 hours and $6075 for the entire three years it is valid. The EPA estimates that approximately 410 respondents will partake in this information collection, with an average respondent burden of 0.5 hours and cost of $22. Responses will be one-time and voluntary, and no capital or start-up expenses will be required. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: June 15, 1999.

**Stephen H. Rothblatt,**

*Chief, Air Programs Branch.*

[FR Doc. 99–16095 Filed 6–23–99; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6366–1]**

## Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation, and Liability Act; In Re: 100 Metronorth Corporate Center LLC—Parcel B—Industri-Plex Superfund Site; Woburn, MA

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed prospective purchaser agreement and request for public comment.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to enter into a prospective purchaser agreement to address claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9601 *et seq.* Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve the liability under CERCLA of 100 MetroNorth Corporate Center LLC, NDNE MetroNorth LLC, and NDNE Real Estate, Inc. for injunctive relief or for costs incurred or to be incurred by EPA in conducting response actions at the Industri-Plex Superfund Site in Woburn, Massachusetts.

**DATES:** Comments must be provided on or before July 26, 1999.

**ADDRESSES:** Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region 1, One Congress Street, Suite 1100, Mailcode RCG, Boston, Massachusetts 02114, and should refer to: Agreement and Covenant Not to Sue Re: 100 MetroNorth Corporate Center LLC—Parcel B, Industri-Plex Superfund Site, Woburn, Massachusetts, U.S. EPA Docket No. CERCLA–I–98–1063.

**FOR FURTHER INFORMATION CONTACT:** Daniel H. Winograd, U.S. Environmental Protection Agency, One Congress Street, Suite 1100, Mailcode SES, Boston, Massachusetts 02214, (617) 918–1885.

**SUPPLEMENTARY INFORMATION:** In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended

(CERCLA), 42 U.S.C. § 9601 *et seq.*, notice is hereby given of a proposed prospective purchaser agreement concerning the Industri-Plex Superfund Site in Woburn, MA. The settlement was approved by EPA Region I, and the Department of Justice subject to review by the public pursuant to this Notice. 100 MetroNorth Corporate Center LLC, NDNE MetroNorth LLC, and NDNE Real Estate, Inc. have executed signature pages committing them to participate in the settlement. Under the proposed settlement, 100 MetroNorth Corporate Center LLC, NDNE MetroNorth LLC, and NDNE Real Estate, Inc. will construct and operate a office park, which may include hotel, retail, research and development, and restaurant operations, and parking and related improvements, and pay $30,000 to the Hazardous Substances Superfund. In addition, all of the settling parties agree to abide by institutional controls and to provide access to the property. EPA believes the settlement is fair and in the public interest.

EPA is entering into this agreement under the authority of CERCLA Section 101 *et seq.* which provides EPA with authority to consider, compromise, and settle a claim under Sections 106 and 107 of CERCLA for costs incurred by the United States if the claim has not been referred to the U.S. Department of Justice for further action. The U.S. Department of Justice has also signed this agreement. EPA will receive written comments relating to this settlement for thirty (30) days1 from the date of publication of this Notice.

A copy of the proposed administrative settlement may be obtained in person or by mail from Daniel H. Winograd, U.S. Environmental Protection Agency, One Congress Street, Suite 1100, Mailcode SES, Boston, Massachusetts 02214, (617) 918–1885.

The Agency's response to any comments received will be available for public inspection with the Docket Clerk, U.S. Environmental Protection Agency, Region 1, One Congress Street, Suite 1100, Mailcode RCG, Boston, Massachusetts (U.S. EPA Docket No. CERCLA–I–98–1063).

Dated: June 3, 1999.

**John DeVillars,**

*Regional Administrator.*

[FR Doc. 99–16096 Filed 6–23–99; 8:45 am]

**BILLING CODE 6560–50–P**

## EXPORT-IMPORT BANK OF THE UNITED STATES

### Notice of Open Special Meeting of the Sub-Saharan African Advisory Committee of the Export-Import Bank of the United States (Export-Import Bank)

**SUMMARY:** The Sub-Saharan African Advisory Committee was established by P.L. 105–121, November 26, 1997, to advise the Board of Directors on the development and implementation of policies and programs designed to support the expansion of the Bank's financial commitments in Sub-Saharan Africa under the loan, guarantee and insurance programs of the Bank. Further, the committee shall make recommendations on how the Bank can facilitate greater support by U.S. commercial banks for trade with Sub-Saharan African.

*Time and Place:* Wednesday, July 21, 1999, at 9:30 a.m to 12:00 noon. The meeting will be held at the Export-Import Bank in Room 1143, 811 Vermont Avenue, NW, Washington, DC 20571.

**AGENDA:** This meeting will include a discussion of the development and implementation of policies and programs designed to support the expansion of Ex-Im Bank's Financial commitments in Sub-Saharan Africa. The discussion will focus on market penetration in Sub-Saharan African countries as experienced by various successful U.S. exporters of goods and services to Sub-Saharan Africa.

*Public Participation:* The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to July 14, 1999, Teri Stumpf, Room 1203, Vermont Avenue, NW, Washington, DC 20571 Voice: (202) 565–3502 or TDD (202) 565–3377.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact Teri Stumpf, Room 1203, 811 Vermont Ave., NW, Washington, DC 20571, (202) 565–3502.

**John M. Niehuss,**

*General Counsel.*

[FR Doc. 99–16132 Filed 6–23–99; 8:45 am]

**BILLING CODE 6690–01–M**

## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

*Agreement No.*: 203–011075–046.
*Title:* Central America Discussion Agreement.
*Parties:*
A.P. Moller-Maersk Line
APL Co. PTE Ltd.
Concorde Shipping, Inc.
Crowley American Transport, Inc.
Dole Ocean Liner Express
Interocean Lines, Inc.
King Ocean Central America, S.A.
Lykes Lines Limited, LLC
Sea-Land Service, Inc.
Seaboard Marine, Ltd.
South Pacific Shipping Company, Ltd. d/b/a Ecuadorian Line. S.A.
*Synopsis:* The proposed amendment would authorize the parties to collectively, or any two or more of them to jointly, enter into service contracts and to adopt voluntary guidelines with respect to the terms and procedures relating to their service contracts.

*Agreement No.* 202–011353–026.
*Title:* The Credit Agreement.
*Parties:*
A.P. Moller-Maersk line
APL Co. PTE Ltd.
Carribbean General Maritime, Ltd.
Crowley American Transport, Inc.
Dole Ocean Liner Express
Evergreen Marine Corporation (Taiwan) Ltd.
King Ocean Central America, S.A.
Lykes Lines Limited,
Mediterranean Shipping Company, S.A.
Sea-Land Service, Inc.
Seaboard Marine, Ltd.
Seaboard Marine of Florida, Inc.
Tecmarine Line, Inc.
Tropical Shipping and Construction Co., Ltd.
Venezuela Container Service
*Synopsis:* The proposed modification would expand the geographic scope of the agreement worldwide, clarify the Puerto Rico and the U.S. Virgin Islands are included only with respect to the foreign commerce of the United

States, and change the name of a party.

*Agreement No.:* 202–011528–010.
*Title:* Japan/United States Eastbound Freight Conference.
*Parties:*
A.P. Moller-Maersk Line
American President Lines, Ltd.
Hapag-Lloyd Contaienr Line GmbH
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
Nippon Yesen Kaisha
Orient Overseas Container Line, Inc.
P&O Nedlloyd B.V.
P&O Nedlloyd Limited
Sea-Land Service, Inc.
Wilhelmsen Lines AS
*Synopsis:* The proposed modification would suspend the subject agreement for a period of six months, during which time the parties will not exercise authority in the agreement except for certain administrative functions and duties. The conference will not publish a common tariff or enter into joint or common service contracts while the agreement is suspended; however, indivdiual members may file their own tariffs and enter into individual or joint service contracts during that period.

*Agreement No.:* 202–011579–009.
*Title:* Inland Shipping Service Association.
*Parties:*
Crowley American Transport, Inc.
King Ocean
Sea-Land Service, Inc.
Seaboard Marine, Ltd. and Seaboard Marine of Florida, Inc.
*Synopsis:* The proposed modification would authorize the parties to adopt voluntary guidelines with respect to the terms and procedures of their individual service contracts.

*Agreement No.:* 203–011654–002.
*Title:* The Middle East Indian Subcontinent Agreement.
*Parties:*
A.P. Moller-Maersk Line
Cho Yang Lines (U.S.A.)
Compagnie Maritime D'Affretement
National Shipping Company of Saudi Arabia
P&O Nedlloyd Limited
Sea-Land Service, Inc.
United Arab Shipping Company (S.A.G.)
*Synopsis:* The proposed Amendment revises Articles 2 and 5 of the Agreement to reflect the voluntary and non-binding nature of agreements reached under the Agreement. It also revises the voting requirements in Article 8 for amendments to the Agreement from three-fourths of the members to all of the members.

Dated: June 18, 1999.

By Order of the Federal Maritime Commission.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 99–16038 Filed 6–23–99; 8:45 am]
BILLING CODE 6730–01–M

## FEDERAL MARITIME COMMISSION

### Privacy Act of 1974; Proposed Altered Systems of Records

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice of proposed altered systems of records.

**SUMMARY:** This Notice proposes the amendment of various Privacy Act systems of records maintained by the Commission. The amendments are minor and reflect changes due to Commission organizational changes, and changes to storage and retrievability of systems.

**DATES:** Comments must be submitted on or before July 26, 1999. The alterations will be effective on August 3, 1999, unless comments are received that would result in a contrary determination.

**ADDRESSES:** Comments may be submitted to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 N. Capitol Street, NW., Washington, DC 20573–0001, (202) 523–5725, email: secretary@fmc.gov.

**FOR FURTHER INFORMATION CONTACT:** Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 N. Capitol Street, NW., Washington, DC 20573–0001, (202) 523–5725.

**SUPPLEMENTARY INFORMATION:** Notice is given that, pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, the Commission proposes to amend various systems of records as described herein. The Commission's latest prior publication updating its system of records was on November 28, 1997 (62 FR 63341).

The amendments proposed herein are minor and reflect Commission organizational changes, as well as the electronic maintenance of certain systems. In addition, system FMC–23 is removed as it is no longer relevant or necessary.

1. In the Commission's system of records designated FMC–2 Non-Attorney Practicioner file, the ''Storage,'' ''Retrievability,'' and ''Safeguards'' provisions are revised to read as follows:

**FMC–2**

* * * * *

**STORAGE:**

Physical records are maintained in file folders. Electronic records are maintained in a database on a computer hard drive.

**RETRIEVABILITY:**

Physical records are indexed alphabetically by name. Electronic records are retrievable by name, address, company, application date, admission date, or card number.

**SAFEGUARDS:**

Physical records are maintained in file cabinets under the control of personnel in the Secretary's office. Electronic records are password protected.

* * * * *

2. The Commission's system of records designated FMC–7 Licensed Ocean Freight Forwarders File is amended as follows:

a. In the provisions designated ''System location'' and ''System manager(s) and address,'' the phrase ''Bureau of Domestic Regulation'' is revised to read ''Bureau of Tariffs, Certification and Licensing'' wherever it appears.

b. In the provision designated ''Record source categories,'' ''Commission District Offices'' is revised to read ''Commission Area Representatives.''

3. In the Commission's system of records FMC–18 Travel Orders/ Vouchers File, the provisions designated ''Authority for maintenance of the system'' and ''Safeguards'' are revised to read as follows:

**FMC–18**

* * * * *

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Federal Travel Regulation, 41 CFR parts 300–304.

* * * * *

**SAFEGUARDS:**

Records are maintained in a locking file cabinet and monitored by the Director of the Office of Budget and Financial Management.

* * * * *

4. The Commission's system of records FMC–22 Investigative Records Information System is amended as follows:

a. The provision designated ''System name'' is revised to read as follows:

**FMC–22**

**SYSTEM NAME:**

Records Tracking System.

* * * * *

b. In the provisions designated ''Categories of records in the system,'' ''Retrievability,'' ''Retention and disposal,'' ''System Manager(s) and address,'' and ''Record source categories,'' the phrase ''Bureau of Investigations'' is revised to read ''Bureau of Enforcement'' wherever it appears.

5. The Commission's system of records FMC–23 Parking Applications is removed.

6. In the Commission's system of records FMC–24 Informal Inquiries and Complaints Files the provisions designated ''Categories of records in the system,'' ''Storage,'' ''Retrievability,'' ''Safeguards,'' and ''Retention and disposal,'' are revised to read as follows:

**FMC–24**

* * * * *

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Copies of complaints and correspondence developed in their resolution complaint tracking logs; and complaint tracking electronic summary database.

* * * * *

**STORAGE:**

Physical records are maintained in file folders; the electronic database is maintained on the Commission's local area network.

**RETRIEVABILITY:**

Physical and electronic records are serially numbered and indexed by complainant and respondents.

**SAFEGUARDS:**

Physical records are maintained in locked file cabinets; access to electronic records is password protected.

**RETENTION AND DISPOSAL:**

Records are maintained by the Federal Maritime Commission for four years and then destroyed. The electronic summary database is permanently maintained.

* * * * *

7. In the Commission's system of records FMC–30 Procurement Integrity Certification Files, in the provision designated ''System manager(s) and address'', ''Bureau of Administration'' is revised to read ''Office of the Managing Director.''

By the Commission.

**Bryant L. VanBrankle,**

*Secretary.*

[FR Doc. 99–16037 Filed 6–23–99; 8:45 am]

BILLING CODE 6730–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Office of Minority Health

### Availability of Funds for Grants for Technical Assistance and Capacity Development Demonstration Program for HIV/AIDS-Related Services in Highly Impacted Minority Communities

**AGENCY:** Office of the Secretary, Office of Minority Health, HHS.

**ACTION:** Notice of Availability of Funds and Requests for Applications for Technical Assistance and Capacity Development Demonstration Grant Program for HIV/AIDS-Related Services in Highly Impacted Minority Communities.

*Purpose:* The purpose of the Technical Assistance and Capacity Development Demonstration Grant Program for HIV/AIDS-Related Services in Highly Impacted Minority Communities is to stimulate and foster the development of effective and durable service delivery capacity for HIV prevention and treatment among organizations closely interfaced with the minority populations highly impacted by HIV/AIDS. The grantee will identify minority community-based organizations (CBOs) and small, non-federally funded minority CBOs that are well linked with minority populations highly affected by HIV/AIDS, and which have recognized needs and/or gaps in their capacity to provide HIV/AIDS-related prevention and care services. The goals are to:

- Provide administrative and programmatic technical assistance to enable those organizations to enhance their delivery of necessary services; and
- Assist those CBOs, through an ongoing mentoring relationship, in the development of their capacity as fiscally viable and programmatically effective organizations thereby allowing them to successfully compete for federal and other resources.

This program is intended to demonstrate the impact of technical assistance and capacity development on improving HIV prevention and care among organizations within a circumscribed area in which many minority individuals are in need of HIV/AIDS prevention and/or treatment services. To the extent that selected services such as substance abuse treatment and public health are available within the circumscribed area, linkages with these services will be fostered as part of the technical assistance. The program intends to address HIV/AIDS issues within the context of related socio-economic factors and contribute to overall community empowerment by strengthening indigenous leadership and organizations.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and to improve the quality of life. This announcement relates to 4 of the 22 priority areas established by Healthy People 2000: (1) Alcohol and other drugs; (2) educational and community-based programs; (3) HIV infection; and (4) sexually transmitted diseases. Potential applicants may obtain a copy of the Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 Midcourse Review and 1995 Revisions (Stock No. 017–001–00526–6) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 or telephone (202) 783–8238.

*Background:* The Office of Minority Health's (OMH) mission is to improve the health of racial and ethnic minority populations through the development of health policies and programs that will help to address the health disparities and gaps. Consistent with its mission, the role of OMH is to serve as the focal point within the Department for service demonstrations, coalition and partnership building, and related efforts to address the health needs of racial and ethnic minorities. In keeping with this mission, OMH is establishing the Technical Assistance and Capacity Development Demonstration Grant Program for HIV/AIDS-Related Services in Highly Impacted Minority Communities to assist in addressing the HIV/AIDS issues facing minority communities in 15 eligible metropolitan statistical areas. This program is based on the hypothesis that providing technical assistance and capacity development to organizations closely linked with the minority populations highly impacted by the disease, will improve their capacity to better serve minority populations with HIV/AIDS prevention and treatment. It is anticipated that this approach will strengthen existing minority CBOs and inexperienced organizations in addressing this health issue by developing and expanding their technical skills and infrastructure capacity. Applicants are encouraged to establish linkages with other federally funded programs supporting HIV/AIDS prevention and care to maximize these efforts.

Disproportionate Effect of HIV/AIDS on Minorities

Current statistics indicate that although advances have been made in the treatment of HIV/AIDS, this epidemic continues as a significant threat to the public health of the United States (U.S.). Despite showing a decline in the past two years, it remains a disproportionate threat to minorities. While African-Americans and Hispanics respectively represent approximately 13% and 10% of the U.S. population, approximately 36% of the more than 640,000 reported total AIDS cases are African-American and 18% are Hispanic.

In 1997, more African-Americans were reported with AIDS than any other racial/ethnic group. Of the total AIDS cases reported that year, 45% (27,075) were reported among African-Americans, 33% (20,197) were reported among whites, and 21% (12,466) were reported among Hispanics. Among women and children with AIDS, African-Americans have been especially affected, representing 60% of all women reported with AIDS in 1997 and 62% of reported pediatric AIDS cases in 1997. During 1997, the rate of new AIDS cases per 100,000 population in the U.S. was 83.7 among African-Americans, 37.7 among Hispanics, 10.4 among whites, 10.4 among American Indians/Alaska Natives, and 4.5 among Asians/Pacific Islanders.

Data from a recent Centers for Disease Control and Prevention study (Trends in the HIV and AIDS Epidemic, 1998) comparing HIV and AIDS diagnoses in 25 states with integrated reporting systems provide a clearer picture of recent shifts in the epidemic. The study indicates that many of the new HIV diagnoses are occurring among African-Americans, women, and people infected heterosexually, with an increase also observed among Hispanics. During the period from January 1994 through June 1997, African-Americans represented 45% of all AIDS diagnoses, but 57% of all HIV diagnoses. Among young people (ages 13 to 24) diagnosed with HIV, 63% were among African-Americans and 5% were among Hispanics. Although some of the states with large Hispanic populations did not have integrated HIV/AIDS reporting and could not be included in this study, HIV diagnoses among Hispanics increased 10% between 1995 and 1996.

*Eligible Applicants:* The following public and private, nonprofit entities are eligible to apply for this grant: (a) a community coalition consisting of at least three discrete organizations with either a minority CBO or state/local health department as the lead organization; (b) a minority CBO; or (c) a state/local health department. (See definitions of Community Coalition and Minority Community-Based Organization found in this announcement.) The applicant must provide the necessary administrative infrastructure to receive and appropriately manage the federal funds. The coalition may also incorporate other partners such as a hospital, a minority health management group, an AIDS Service Organization, or other CBOs with strong links to the target population.

In order to maximize the use of resources and target efforts where the HIV/AIDS epidemic is most severe in racial and ethnic minority populations, eligible applicants must be located in one of the following 15 metropolitan statistical areas. These are the areas indicated by the Centers for Disease Control and Prevention (CDC) in its HIV/AIDS Surveillance Reports for 1996 and 1997 as having the highest number of newly reported AIDS cases in 1995, 1996, and 1997.

- Atlanta, GA
- Baltimore, MD
- Boston, MA
- Chicago, IL
- Dallas, TX
- Ft. Lauderdale, FL
- Houston, TX
- Los Angeles, CA
- Miami, FL
- New York, NY
- Newark, NJ
- Philadelphia, PA
- San Francisco, CA
- San Juan, PR
- Washington, DC

National organizations, universities and institutions of higher education are not eligible to apply, although they may be members of the coalition. Local affiliates of national organizations which meet the definition of a minority community-based organization however, are eligible.

*Project Requirements:* The applicant must propose to conduct a model program within the eligible metropolitan statistical area which is designed to carry out the following functions:

(1) Identify the existing capacity for delivering HIV-related services (both HIV prevention and treatment) to minority populations and compare this with available HIV/AIDS surveillance data. The use of geographic information systems and related techniques should be given due consideration as one of the tools to address this area;

(2) Identify high risk minority communities where there are recognized gaps in services for minority populations with HIV/AIDS;

(3) Increase the capacity of existing minority CBOs including small, non-federally funded minority CBOs which are well interfaced with the populations to be served to deliver HIV/AIDS prevention and care by:

(a) providing administrative technical assistance to improve the fiscal and organizational capacity appropriate to their programmatic responsibilities, which may require a mentoring relationship over time; and

(b) identifying programmatic technical assistance from the Department of Health and Human Services' Operating Divisions and linking appropriate CBOs with these resources.

(4) Utilizing consultants, as needed, to provide specific technical assistance beyond the expertise of core staff (e.g., peer-peer technical assistance capability); and

(5) Working with newly identified CBOs to develop strong linkages with other providers of services to complete a continuum of prevention and treatment services, including substance abuse treatment and mental health services for minority HIV/AIDS populations.

*Availability of Funds:* Approximately $4.5 million is expected to be available for award in FY 1999. It is projected that awards of $1.0 to $1.2 million total costs (direct and indirect) for a 12-month period will be made to four competing applicants.

*Use of Grant Funds:* Budgets between $1.0 and $1.2 million total costs (direct and indirect) per year may be requested to cover costs of: personnel, consultants, supplies, equipment, and grant related travel. Funds may not be used for medical treatment, construction, building alterations, or renovations. All budget requests must be fully justified in terms of the proposed objectives and activities and include a computational explanation of how costs were determined.

*Period of Support:* The start date for the Technical Assistance and Capacity Development Demonstration Grant Program for HIV/AIDS-Related Services in Highly Impacted Minority Communities, is September 30, 1999. Support may be requested for a total project period not to exceed 3 years. Noncompeting continuation awards of $1.0 to $1.2 million will be made subject to satisfactory performance and availability of funds.

*Deadline:* To receive consideration, grant applications must be received by the Office of Minority Health (OMH) Grants Management Office by July 26,

1999. Applications will be considered as meeting the deadline if they are: (1) Received on or before the deadline date, or (2) postmarked on or before the deadline date and received in time for orderly processing. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Applications submitted by facsimile transmission (FAX) or any other electronic format will not be accepted. Applications which do not meet the deadline will be considered late and will be returned to the applicant unread.

*Addresses/Contacts:* Applications must be prepared using Form PHS 5161–1 (Revised May 1996 and approved by OMB under control Number 0937–0189). Application kits and technical assistance on budget and business aspects of the application may be obtained from Ms. Carolyn A. Williams, Grants Management Officer, Division of Management Operations, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852, telephone (301) 594–0758. Completed applications are to be submitted to the same address.

Questions regarding programmatic information and/or requests for technical assistance in the preparation of grant applications should be directed to Ms. Cynthia H. Amis, Director, Division of Program Operations, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852, telephone (301) 594–0769.

Technical assistance is also available through the OMH Regional Minority Health Consultants (RMHCs). A listing of the RMHCs and how they may be contacted will be provided in the grant application kit. Additionally, applicants can contact the OMH Resource Center (OMH–RC) at 1–800–444–6472 for health information.

**Criteria for Evaluating Applications**

*Review of Application*

Applications will be screened upon receipt. Those that are judged to be incomplete, non-responsive to the announcement or nonconforming will be returned without comment. Each applicant may submit no more than one proposal under this announcement. If an organization submits more than one proposal, all will be deemed ineligible and returned without comment. Accepted applications will be reviewed for technical merit in accordance with PHS policies. Applications will be evaluated by an Objective Review Panel chosen for their expertise in minority health, experience relevant to this technical assistance and capacity development program, and their understanding and knowledge of the health problems confronting racial and ethnic minorities in the United States. Applicants are advised to pay close attention to the specific program guidelines and general instructions provided in the application kit.

*Application Review Criteria*

The technical review of applications will consider the following generic factors.

Factor 1: Background (15%)

Adequacy of demonstrated knowledge of the HIV/AIDS epidemic at the local level. Established level of cultural competence and sensitivity to the issues of minority populations impacted by HIV/AIDS in the service area. Expertise and understanding of HIV/AIDS prevention and treatment service delivery systems especially as related to HIV/AIDS care among minority populations. Demonstrated need for technical assistance and capacity development among the proposed target service organizations. History of long term relationship with the targeted minority community and evidence of support of local agencies and/or organizations.

Extent to which the applicant demonstrates access to targeted organizations, is well-positioned and accepted within the communities to be served, and able to interface with community leadership and existing provider systems in the area. Demonstration of objective outcomes of past efforts/activities with the target population.

Factor 2: Objectives (15%)

Relative merit of the objectives of the demonstration project, their relevance to the program purpose and stated problem, and their attainability in the stated time frames.

Factor 3: Methodology (35%)

Appropriateness of proposed approach including any established organizational linkages for providing administrative and programmatic technical assistance related to HIV/AIDS and assisting with the capacity development of identified CBOs. Appropriateness of specific activities for providing administrative and programmatic technical assistance related to HIV/AIDS and capacity development. Logic and sequencing of the planned approaches in relation to the provision of HIV/AIDS technical assistance and capacity development. Appropriateness of defined roles and resources.

Factor 4: Evaluation (20%)

Thoroughness, feasibility and appropriateness of the evaluation design, data collection, and analysis procedures. For example, number of new CBOs identified, number of new CBOs submitting applications for grants and number of grants awarded, number of CBOs requesting technical assistance and the percentage receiving it, and identification of outcome variables for quality of service. Clarity of the intent and plans to document the activities and their outcomes to establish a model. The potential for replication of the project for similar target populations and communities including the assessment of the utility of the different tools used to implement the program.

Factor 5: Management Plan (15%)

Applicant demonstrates an ability to mobilize a strong administrative technical assistance capacity with onsite knowledge of organizational management skills, diversification of fiscal base, and organizational development. Applicant organization's capability to manage and evaluate the project as determined by: the qualifications of proposed staff or requirements for ''to be hired'' staff; proposed staff level of effort; and management experience of the applicant.

**Award Criteria**

Funding decisions will be determined by the Acting Deputy Assistant Secretary for Minority Health of the Office of Minority Health and the Director of the Office of HIV/AIDS Policy and will take under consideration: recommendations/ratings of the review panel and geographic and racial/ethnic distribution. Consideration will also be given to projects proposed to be implemented in Empowerment Zones and Enterprise Communities in the 15 eligible metropolitan statistical areas.

**Definitions**

For purposes of this grant announcement, the following definitions are provided:

Community-Based Organization—Public and private, nonprofit organizations which are representative of communities or significant segments of communities, and which address health and human services.

Community Coalition—At least three (3) discrete organizations and institutions in a community which

collaborate on specific community concerns, and seeks resolution of those concerns through a formalized relationship documented by written memoranda of understanding/agreement signed by individuals with the authority to represent the organizations (e.g., president, chief executive officer, executive director).

Minority Community-Based Organization—Public and private nonprofit community-based minority organization or a local affiliate of a national minority organization that has: a governing board composed of 51 percent or more racial/ethnic minority members, a significant number of minorities employed in key program positions, and an established record of service to a racial/ethnic minority community.

Minority Populations—American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, and Native Hawaiian or Other Pacific Islander. (Revision to the Standards for the Classification of Federal Data on Race and Ethnicity, **Federal Register**, Vol. 62, No. 210, pg. 58782, October 30, 1997.)

**Reporting and Other Requirements**

*General Reporting Requirements*

A successful applicant under this notice will submit: (1) progress reports; (2) an annual Financial Status Report; and (3) a final progress report and Financial Status Report in the format established by the Office of Minority Health, in accordance with provisions of the general regulations which apply under CFR 74.50–74.52.

*Provision of Smoke-Free Workplace and Non-Use of Tobacco Products by Recipients of PHS Grants*

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

*Public Health System Reporting Requirements*

This program is subject to Public Health Systems Reporting Requirements. Under these requirements, a community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted: (a) a copy of the face page of the application (SF 424), and (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) a description of the population to be served, (2) a summary of the services to be provided, and (3) a description of the coordination planned with the appropriate State or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to the Office of Minority Health.

*State Reviews*

This program is subject to the requirements of Executive Order 12372 which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit to be made available under this notice will contain a listing of States which have chosen to set up a review system and will include a State Single Point of Contact (SPOC) in the State for review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline established by the Office of Minority Health's Grants Management Officer.

The Office of Minority Health does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (See ''Intergovernmental Review of Federal Programs'' Executive Order 12372 and 45 CFR Part 100 for a description of the review process and requirements).

**Authority:** This program is authorized under section 1707(e)(1) of the Public Health Service Act, as amended by Pub. L. 105–392.

OMB Catalog of Federal Domestic Assistance: The OMB Catalog of Federal Domestic Assistance number for this program is pending.

Dated: June 17, 1999.

**Nathan Stinson, Jr.,**

*Acting Deputy Assistant Secretary for Minority Health.*

[FR Doc. 99–16069 Filed 6–23–99; 8:45 am]

BILLING CODE 4160–17–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement 99156]**

### Cooperative Agreement With a National Organization for Promoting Health, Preventing Disease and Disability, and Managing Chronic Disease in the Workplace; Notice of Availability of Funds

**A. Purpose**

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program with a national organization for promoting health, preventing disease and disability, and managing chronic disease in the workplace. This announcement relates to all areas of ''Healthy People 2000.'' The purpose of this program is to promote the attainment of the objectives outlined in ''Healthy People 2000'' through the translation of public health principles and practices into easily interpretable and actionable information for the workplace.

**B. Eligible Applicants**

Applications will be accepted from national, nonprofit organizations who provide documented proof of meeting the following criteria in the ''Eligibility'' section of the application:

1. Be an established tax-exempt organization (i.e., a non-governmental, tax exempt corporation or association whose net earnings in no way accrue to the benefit of private shareholders or individuals). Tax-exempt status may be confirmed by providing a copy of the relevant pages from the Internal Revenue Service's (IRS) most recent list of 501(c)(3)or(6) tax exempt organizations or a copy of the current IRS Determination Letter. Proof of tax exempt status must be provided with the application.

2. Have a membership composed primarily of large private employers with multi-state and/or national operations and sales.

**Note:** Public Law 104–65 states that an organization described in section 501(c)(4) of

the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

**C. Availability of Funds**

Approximately $350,000 is available in FY 1999 for 1–2 awards. It is expected that the average award will be $175,000, ranging from $75,000 to $275,000. It is expected that awards will begin on or about September 30, 1999, for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by the successful completion of required activities and reports, and by the availability of funds.

**D. Program Requirements**

In conducting activities to achieve the purposes of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities under 2. CDC Activities.

*1. Recipient Activities*

a. Develop and implement a needs assessment of members in the areas of health promotion, disease and disability prevention, chronic disease management, wellness and health screening programs, health care quality assessment and improvement, health benefits purchasing, and community outreach.

b. Disseminate information to members concerning health and health-related issues through various methods, not necessarily limited to conferences, meetings, seminars, symposia, and publications.

c. Facilitate communication, information sharing, collaboration, and recognition of achievements on health and health-related issues and activities among members.

d. Work with members to promote broad public and population health objectives.

e. Develop a model(s) for partnerships for health in the workplace.

*2. CDC Activities*

a. Provide technical assistance and monitor the progress of all aspects of this cooperative agreement.

b. Provide up-to-date scientific information.

**E. Application Content**

Use the information in the Purpose, Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Applications will be evaluated on the criteria listed, so it is important to follow them in laying out the program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one-inch margins and 12-point font.

*1. Organizational Profile (Maximum 7 Pages)*

a. Provide a narrative on the applicant organization, including: Background information, evidence of relevant experience, and a clear understanding of this announcement's purpose. Provide evidence of an organizational structure and mission that can meet the requirements of this program.

b. Provide a membership listing and an estimate of members' combined total workforce.

c. Include details of past experiences working with members on health and health-related issues.

d. Profile qualified personnel who are available to work under this agreement. Include a global organizational chart which also demonstrates the geographic location(s) and organizational positions of all anticipated personnel.

*2. Program Plan (Maximum 18 Pages)*

a. Provide clear and concise descriptions of proposed recipient activities; demonstrating your understanding of public health principles, the intent of this announcement, and your members' needs. Include some preliminary ideas on members' needs (in the areas of health promotion, disease and disability prevention, chronic disease management, wellness and health screening programs, health care quality assessment and improvement, health benefits purchasing, and community outreach) and how they relate to this announcement.

b. Include goals and measurable objectives that are specific, time-framed and relevant to the intent of this announcement. Detail the potential benefits of the proposed objectives.

c. Provide an action plan, including a timeline of activities and personnel responsible for implementing each segment of the plan.

d. Include an evaluation plan which encompasses both qualitative and quantitative measures for the achievement of program objectives, as well as a mechanism for mid-course correction when those objectives are not being met.

e. Provide a plan for sharing findings/results indicating when, to whom, and in what format.

f. Provide a plan for obtaining additional resources from non-federal sources to supplement program activities and ensure their continuation after the end of the project period.

*3. Budget Information*

Provide a detailed budget with justification. The budget proposal should be consistent with the purpose, program requirements, and program plan presented.

**F. Submission and Deadline**

Submit the original and two copies of PHS–5161–1 (OMB Number 0937–0189). Forms are in the application kit.

On or before August 16, 1999, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

*Deadline:* Applications shall be considered as meeting the deadline if they are either: (a) Received on or before the deadline date; or (b) Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

*Late Applications:* Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

**G. Evaluation Criteria**

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

*1. Organizational Profile (15 Points)*

The extent to which the applicant's existing organizational structure, mission, goals, objectives, activities, functions and membership composition are consistent with the purpose of this Program Announcement.

*2. Capability (25 Points)*

The extent to which the applicant appears likely to succeed in implementing the proposed activities as measured by relevant past history, a sound management structure and staff qualifications—including the appropriateness of proposed roles, responsibilities and job descriptions.

*3. Program Plan (40 Points)*

The extent to which the applicant's program plan meets the required activities specified under ''Recipient Activities'' in this announcement; and are measurable, specific, time-framed and realistic.

*4. Evaluation (20 Points)*

The extent to which the applicant has developed mechanisms for evaluating and reevaluating progress toward stated goals and objectives which include feedback from its membership. The extent to which the applicant builds in the capacity for mid-course correction(s) based on those evaluations.

*5. Budget (Not Scored)*

The extent to which the budget is reasonable in the amount(s) requested, justified by the application content, and consistent with the intentions of this announcement.

**H. Other Requirements**

*Technical Reporting Requirements*

Provide CDC with original plus two copies of:

1. Annual progress reports;
2. Financial status report, no more than 90 days after the end of the budget period; and
3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application package.

AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status

**I. Authority and Catalog of Federal Domestic Assistance Number**

This program is authorized under sections 301 and 317(k)(2) of the Public Health Service Act [42 U.S.C. 241 and 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

**J. Where To Obtain Additional Information**

To download this and other CDC Program Announcements, you can go the CDC home page *www.cdc.gov* and click on ''funding''.

If you do not have Internet access to receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement Number of interest. Please refer to Program Announcement 99156 when you request information. Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99156, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341, Telephone (770) 488–2717, Email address jcw6@cdc.gov.

For program technical assistance, contact:

Kenneth A. Schachter, M.D., M.B.A., Medical Director, Epidemiology Program Office, Office of HealthCare Partnerships, Centers for Disease Control and Prevention (CDC), Telephone 404/639–4449, Email address kbs3@cdc.gov
and
Priscilla B. Holman, M.S. Ed., Health Communication Corporate Liaison, Office of Program Planning and Evaluation, Centers for Disease Control and Prevention (CDC), Telephone: 404/639–1929, E-mail: pbh2@cdc.gov

Dated: June 18, 1999.

**John L. Williams,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 99–16065 Filed 6–23–99; 8:45 am]

BILLING CODE 1463–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 99D–1718]**

### Draft Guidance for Industry on Monoclonal Antibodies Used as Reagents in Drug Manufacturing; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Monoclonal Antibodies Used as Reagents in Drug Manufacturing.'' This draft guidance provides recommendations to sponsors and applicants on the information that should be included in investigational new drug applications (IND's), new drug applications (NDA's), abbreviated new drug applications (ANDA's), biologics license applications (BLA's), and supplements to these applications when monoclonal antibodies are used as reagents in the manufacture of drug substances and drug products that are regulated by the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER).

**DATES:** Written comments on the draft guidance document may be submitted by September 22, 1999. General comments on agency guidance documents are welcome at any time.

**ADDRESSES:** Copies of this draft guidance are available on the Internet at ''http://www.fda.gov/cder/guidance/index.htm'' or ''http://www.fda.gov/cber/guidelines.htm''. Submit written requests for single copies of the draft guidance for industry to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, 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. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:**

Eugenia M. Nashed, Office of New Drug Chemistry (HFD–570), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1050, or

Kurt A. Brorson, Office of Therapeutics Research and Review (HFM–561), Center for Biologics Evaluation and Research, 8800 Rockville Pike, Bethesda, MD 20892–0029, 301–827–0661.

**SUPPLEMENTARY INFORMATION:** FDA is announcing the availability of a draft guidance for industry entitled ''Monoclonal Antibodies Used as Reagents in Drug Manufacturing.'' This draft guidance focuses on chemistry, manufacturing, and control issues relating to the use of monoclonal antibodies as reagents in drug substance and drug product manufacture that should be addressed in IND's, NDA's, ANDA's, BLA's, and supplements to these applications.

This draft level 1 guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). It represents the agency's current thinking on monoclonal antibodies used as reagents. 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 statute, regulations, or both.

Interested persons may submit written comments on the draft guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 16, 1999.

**Margaret M. Dotzel,**

*Acting Associate Commissioner for Policy Coordination.*

[FR Doc. 99–16139 Filed 6–23–99; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 99D–1738]**

### Draft Guidance for Industry on Bioavailability and Bioequivalence Studies for Nasal Aerosols and Nasal Sprays for Local Action; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Bioavailability and Bioequivalence Studies for Nasal Aerosols and Nasal Sprays for Local Action.'' This draft guidance document provides recommendations to applicants intending to provide studies to document bioavailability (BA) or bioequivalence (BE) in support of new drug applications (NDA's), or abbreviated new drug applications (ANDA's) for locally acting nasal aerosols (metered-dose inhalers) and nasal sprays (metered-dose spray pumps).

**DATES:** Written comments on the draft guidance document may be submitted by September 22, 1999. General comments on agency guidance documents are welcome at any time.

**ADDRESSES:** Copies of this draft guidance are available on the Internet at ''http://www.fda.gov/cder/guidance/index.htm''. Submit written requests for single copies of the draft guidance for industry to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one-self addressed adhesive label to assist the office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Wallace P. Adams, Center for Drug Evaluation and Research (HFD–350), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5651.

**SUPPLEMENTARY INFORMATION:** FDA is announcing the availability of a draft guidance for industry entitled ''Bioavailability and Bioequivalence Studies for Nasal Aerosols and Nasal Sprays for Local Action.'' This draft guidance provides recommendations to applicants intending to provide studies to document BA or BE in support of NDA's or ANDA's for locally acting nasal aerosols and nasal sprays. This guidance covers prescription corticosteroids, antihistamines, anticholinergic drug products, and the over-the-counter (OTC) mast-cell stabilizer cromolyn sodium. This guidance does not cover studies of nasal sprays included in applicable OTC monographs or studies of: (1) Metered-dose products intended to deliver drug systemically via the nasal route, or (2) drugs in nasal nonmetered dose atomizer (squeeze) bottles that require premarket approval.

This draft level 1 guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on BA and BE product quality information related to nasal inhalation aerosols and nasal metered-dose spray pumps. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. Alternative approaches to documentation of BA and BE may be used if such approaches satisfy the requirements of the applicable statute, regulations, or both.

Interested persons may, on or before September 22, 1999, submit to the Dockets Management Branch (address above) written comments with evidence to support or refute approaches on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance document and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 16, 1999.

**Margaret M. Dotzel,**

*Acting Associate Commissioner for Policy Coordination.*

[FR Doc. 99–16140 Filed 6–23–99; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Inspector General

### Draft OIG Compliance Program Guidance for Certain Medicare+Choice Organizations

**AGENCY:** Office of Inspector General (OIG), HHS.

**ACTION:** Notice and comment period.

**SUMMARY:** This **Federal Register** notice seeks the comments of interested parties on draft compliance program guidance developed by the Office of Inspector General for Medicare+Choice Organizations that offer Coordinated Care Plans (M+CO/CCPs). Through this notice, the OIG is setting forth its general views on the value and fundamental principles of M+CO/CCP compliance programs, and the specific elements that each M+CO/CCP should consider when developing and implementing an effective compliance program.

**DATES:** To assure consideration, comments must be delivered to the address provided below by no later than 5 p.m. on July 26, 1999.

**ADDRESSES:** Please mail or deliver written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–4N–CPG, Room 5246, Cohen Building, 330 Independence Avenue, S.W., Washington, D.C. 20201.

We do not accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG–4N–CPG. Comments received timely will be available for public inspection as they are received, generally beginning approximately 2 weeks after publication of a document, in Room 5541 of the Office of Inspector General at 330 Independence Avenue, S.W., Washington, D.C. 20201 on Monday through Friday of each week from 8:00 a.m. to 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Susan Lemanski or Barbara Frederickson, (202) 619–2078, Office of Counsel to the Inspector General.

**SUPPLEMENTARY INFORMATION:**

## Background

The creation of compliance program guidance has become a major initiative of the OIG in its efforts to engage the private health care community in addressing and fighting fraud and abuse. In the last several years, the OIG has developed and issued the following compliance program guidance directed at various segments of the health care industry:

- Clinical Laboratories (62 FR 9435; March 3, 1997, as amended in 63 FR 45076; August 24, 1998),
- Hospitals (63 FR 8987; February 23, 1998),
- Home Health Agencies (63 FR 42410; August 7, 1998), and
- Third-Party Medical Billing Companies (63 FR 70138; December 18, 1998).

In addition, the OIG published a draft compliance guidance for Durable Medical Equipment, Prosthetics, Orthotics and Supply Industry (64 FR 4435; January 28, 1999). The guidance can also be found on the OIG web site at http://www.dhhs.gov/progorg/oig.

On September 22, 1998, the OIG published a solicitation notice seeking information and recommendations for developing formal guidance for M+CO/CCPs (63 FR 50577). In response to that solicitation notice, the OIG received 5 comments from various parts of the industry and their representatives. In developing this notice for formal public comment, we have considered those comments, as well as previous OIG publications, such as other compliance program guidances, Special Fraud Alerts, reports issued by the OIG's Office of Audit Services and Office of Evaluation and Inspections. We also took into account past and recent fraud investigations conducted by the OIG's Office of Investigations and the Department of Justice, and have consulted directly with HCFA.

## Elements Addressed in the Draft M+CO/CCP Guidance

This draft of M+CO/CCP guidance contains the following 7 elements that the OIG has determined are fundamental to an effective compliance program:

- Implementing written policies, procedures and standards of conduct;
- Designating a compliance officer and compliance committee;
- Conducting effective training and education;
- Developing effective lines of communication;
- Conducting internal monitoring and auditing;
- Enforcing standards through well-publicized disciplinary guidelines; and
- Responding promptly to detected offenses and developing corrective action.

These elements are contained in the other guidances issued by the OIG, indicated above. As with the other guidances, this draft compliance program guidance represents the OIG's suggestions on how M+CO/CCPs can best establish internal controls and monitoring to correct and prevent fraudulent activities. The contents of this guidance should not be viewed as mandatory or as an exclusive discussion of the advisable elements of a compliance program. While elements put forth in this draft compliance guidance are similar to elements HCFA has included in its conditions to contract as an M+C organization, the guidance is intended to present voluntary guidance to the industry, and not represent binding standards for M+CO/CCPs.

## Public Input and Comment in Developing Final Guidance

In an effort to ensure that all parties have an opportunity to provide input into the OIG's guidance, we are publishing this guidance in draft form. We welcome any comments from interested parties regarding this guidance.′

We will consider all comments that are received within the above-cited time frame, incorporate any recommendations as appropriate, and will prepare and publish a final version of the M+CO/CCP guidance.

## Draft Compliance Program Guidance for M+CO/CCPs (June 1999)

### *I. Introduction*

In its ongoing effort to work collaboratively with the health care industry to achieve the mutual goals of quality health care and the elimination of fraud, waste and abuse, the Office of Inspector General (OIG) of the Department of Health and Human Services (HHS) has encouraged voluntarily developed and implemented compliance programs for the health care industry. As a demonstration of the OIG's commitment to compliance, the OIG has issued recommendations, in the form of compliance program guidances, that provide suggestions regarding how specific segments of the industry can best implement compliance programs.[1]

As a result of the changing nature of the health care delivery system and the growing trend toward reliance on the managed care industry in the provision of such health care delivery, the OIG believes it is appropriate to issue a guidance focusing on Medicare+Choice organizations[2] offering coordinated care plans[3] (Medicare+Choice organizations). The OIG believes that the implementation of compliance plans in the managed care industry can provide a mechanism for further improving the quality, productivity and efficiency of the health care industry as a whole. This guidance is intended to assist Medicare+Choice organizations and their agents and subcontractors in developing effective internal controls that promote adherence to applicable Federal and State law and the program requirements of Federal health plans.

While the regulations implementing the Medicare+Choice program, or Part C, require a Medicare+Choice organization to establish a compliance plan,[4] the OIG's program guidance is voluntary and simply is intended to provide assistance for Medicare+Choice organizations looking for additional direction in the development and implementation of a compliance program. As such, this guidance addresses the OIG's view on comprehensive compliance programs pertaining to Medicare+Choice organizations.

The OIG formulated this guidance specifically for Medicare+Choice organizations because these organizations are well-defined and somewhat limited in the statutory and regulatory jurisdiction of the States, as evidenced by the pre-emption

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[1] *See* 64 FR 4435 (1/28/99) for the draft compliance program guidance for the durable medical equipment, prosthetics, orthotics and suppliers industry; 63 FR. 70138 (12/18/98) for compliance program guidance for third-party medical billing companies; 63 FR 45076 (8/24/98) for compliance program guidance for clinical laboratories; 63 FR 42410 (8/7/98) for compliance program guidance for home health agencies; and 63 FR 8987 (2/23/98) for compliance program guidance for hospitals. These documents are also located on the Internet at http://www.dhhs.gov/progorg/oig.

[2] A Medicare+Choice organization is defined as a public or private entity organized and licensed by a State as a risk-bearing entity (with the exception of provider-sponsored organizations receiving waivers) that is certified by the Health Care Financing Administration (HCFA) as meeting the Medicare+Choice contract requirements. *See* 42 CFR 422.2.

[3] For the purposes of this compliance program guidance, a ''coordinated care plan'' is a plan that includes a network of providers that are under contract or arrangement with the organization to deliver the benefit package approved by HCFA. *See* 42 U.S.C. 1395w–28(a)(1); 42 CFR 422.4.

[4] The regulations require that any plan contracting with HCFA implement a compliance plan that encompasses the elements detailed in the Federal Sentencing Guidelines. *See* 42 CFR 422.501(b)(vi). HCFA will release an operational policy letter addressing the compliance requirements detailed in the regulation. In response to concerns from industry representatives on the short time frame for implementing a compliance plan, HCFA delayed the actual implementation date of the compliance plan until January 1, 2000.

provisions.[5] In this guidance, we have focused our attention on Federal health care regulations governing marketing, enrollment, disenrollment, underutilization, data collection, anti-kickback statute and anti-dumping, rather than providing instruction on all aspects of regulatory compliance. The OIG encourages managed care organizations to read the guidance with the whole organization in mind, applying the guidance to whatever departments or divisions, including private-sector managed care areas, that are deemed appropriate. Indeed, many of the suggestions in this guidance can be used by managed care organizations that do not contract with HCFA. In particular, entities that participate in other public health care programs, such as Medicaid, may want to look to the general principles in this document to assist them in developing compliance programs.

Within this document, the OIG first provides its general views on the value and fundamental principles of Medicare+Choice organizations' compliance programs, and then provides specific elements that each Medicare+Choice organization should consider when developing and implementing an effective compliance program.

Fundamentally, compliance efforts are designed to establish a culture within an organization that promotes prevention, detection and resolution of instances of conduct that do not conform to Federal and State law and Federal health care program requirements, as well as the Medicare+Choice organization's ethical and business policies. In practice, the compliance program should effectively articulate and demonstrate the organization's commitment to legal and ethical conduct. Eventually, a compliance program should become part of the fabric of a Medicare+Choice organization's routine operations.

It is incumbent upon a Medicare+Choice organization's officers and managers to provide ethical leadership to the organization and to assure adequate systems and resources are in place to facilitate and promote ethical and legal conduct. Employees, managers and the Government will focus on the words and actions (including decisions made on resources devoted to compliance) of a Medicare+Choice organization's leadership as a measure of the organization's commitment to compliance. Indeed, many organizations have adopted mission statements articulating their commitment to high ethical standards.

Implementing an effective compliance program requires a substantial commitment of time, energy and resources by senior management and the Medicare+Choice organization's governing body. Superficial programs that simply purport to comply with the elements discussed and described in this guidance, or programs hastily constructed and implemented without appropriate ongoing monitoring, will likely be ineffective and could expose the Medicare+Choice organization to greater liability than no program at all. Although an effective compliance program may require significant additional resources or a reallocation of existing resources, the long term benefits of implementing such a program significantly outweigh the costs. Undertaking a compliance program is a beneficial investment that advances the Medicare+Choice organization, the health of Medicare+Choice enrollees and the stability and solvency of the Medicare program.

A. Benefits of a Compliance Program

The OIG believes an effective compliance program provides a mechanism that brings the public and private sectors together to reach mutual goals of reducing fraud and abuse, improving operational quality, improving the quality of health care and reducing the costs of health care. Attaining these goals provides positive results to business, Government, individual citizens and Medicare beneficiaries alike. In addition to fulfilling its legal duty to ensure that it is not submitting false or inaccurate information to the Government or providing substandard care to Medicare beneficiaries, a Medicare+Choice organization may gain numerous additional benefits by implementing an effective compliance program. These benefits may include:

- The formulation of effective internal controls to assure compliance with Federal regulations and internal guidelines;
- Improved collaboration, communication and cooperation between health care providers and the Medicare+Choice organization, as well as within the Medicare+Choice organization itself;
- Improved communication with and satisfaction of Medicare+Choice enrollees;
- The ability to more quickly and accurately react to employees' operational compliance concerns and the capability to effectively target resources to address those concerns;
- A concrete demonstration to employees and the community at large of the Medicare+Choice organization's strong commitment to honest and responsible corporate conduct;
- The ability to obtain an accurate assessment of employee and contractor behavior relating to fraud and abuse;
- Improved (clinical and non-clinical) quality of care and service;
- Improved assessment tools that could affect many or all of the Medicare+Choice organization's divisions or departments;
- Increased likelihood of identification and prevention of unlawful and unethical conduct;
- A centralized source for distributing information on health care statutes, regulations and other program directives related to fraud and abuse;
- An environment that encourages employees to report potential problems;
- Procedures that allow the prompt, thorough investigation of possible misconduct by corporate officers, managers, employees and independent contractors;
- An improved relationship with the Center for Health Plans and Providers (CHPP) at HCFA;
- Early detection and reporting, minimizing the loss to the Government from false claims, and thereby reducing the Medicare+Choice organization's exposure to civil damages and penalties, criminal sanctions, and administrative remedies, such as program exclusion;[6] and
- An enhancement of the structure of the Medicare+Choice organization's separate business units.

Overall, the OIG believes that an effective compliance program is a sound

[5] *See* 42 U.S.C. 1395w–26(b)(3); 42 CFR 422.402. The Federal preemption provisions in the Medicare+Choice regulations cover: (1) any State statutes, regulations, contract requirements, or any other standards that would otherwise apply to Medicare+Choice organizations only to the extent that such State laws are inconsistent with the standards under 42 CFR part 422; and (2) State laws that are specifically preempted in 42 CFR 422.402(b).

[6] The OIG, for example, will consider the existence of an effective compliance program that pre-dated any governmental investigation when addressing the appropriateness of administrative sanctions. However, the burden is on the Medicare+Choice organization to demonstrate the operational effectiveness of a compliance program. Further, the False Claims Act, 31 U.S.C. 3729–3733, provides that a person who has violated the Act, but who voluntarily discloses the violation to the Government within thirty days of detection, in certain circumstances will be subject to not less than double, as opposed to treble, damages. *See* 31 U.S.C. 3729(a). In addition, an organization will receive sentencing credit for an ''effective'' compliance program under the Federal Sentencing Guidelines. *See* United States Sentencing Commission Guidelines, *Guidelines Manual*, 8C2.5. Thus, the ability to react quickly when violations of the law are discovered may materially reduce the Medicare+Choice organization's liability.

business investment that has the potential of enhancing the efficiency and effectiveness of the Medicare+Choice organization. It may also improve the Medicare+Choice organization's financial structure by addressing not only fraud and abuse concerns, but efficiency and productivity concerns in other operational areas.

The OIG recognizes the implementation of an effective compliance program may not entirely eliminate fraud, abuse and waste from an organization. However, a sincere effort by a Medicare+Choice organization to comply with applicable Federal and State standards, through the establishment of an effective compliance program, significantly reduces the probability of unlawful or improper conduct.

B. Application of Compliance Program Guidance

Before explaining the specific elements of a compliance program, it is important to emphasize several aspects of this document: its voluntary nature, its applicability to Medicare+Choice organizations that offer coordinated care plans, the collaborative nature by which it was developed, and its evolving nature.

First, it should be re-emphasized that while the regulations implementing the Medicare+Choice program, or Part C, require a Medicare+Choice organization to establish a compliance plan, including specified elements,[7] this program guidance is voluntary. Although this document presents basic procedural and structural guidance for designing a compliance program, it is not in itself a compliance program. Rather, it is a set of guidelines for consideration by a Medicare+Choice organization interested in obtaining specific information on implementing a compliance program. This guidance represents the OIG's suggestions on how a Medicare+Choice organization can establish internal controls and monitor company conduct to correct and prevent fraudulent activities.

It is critical for the Medicare+Choice organization to assess its own organization and determine its needs with regard to compliance with applicable Federal and State statutes and Federal health care program requirements. By no means should the contents of this guidance be viewed as an exclusive discussion of the advisable components of a compliance program. On the contrary, the OIG strongly encourages Medicare+Choice organizations to develop and implement compliance components that uniquely address the individual organization's risk areas.

Implementing a compliance program in the managed care industry is a complicated venture. There are significant variances and complexities among Medicare+Choice organizations in terms of the type of services and the manner in which these services are provided to the respective members. For example, some Medicare+Choice organizations cover broad service areas, while others are focused on a particular geographic region. Similarly, the range of benefits covered differ among plans. Clearly, these differences may give rise to different substantive policies to ensure effective compliance. Furthermore, some Medicare+Choice organizations are relatively small (such as provider-sponsored organizations (PSOs)), while others are fully integrated and offer Medicare+Choice plans[8] in a wide variety of areas. Finally, the availability of resources for any one Medicare+Choice organization can differ vastly.

Notwithstanding these differences, this guidance is pertinent for all Medicare+Choice organizations, large or small, regardless of the type of services provided. The applicability of the recommendations and guidelines provided in this document may depend on the circumstances and resources of each particular Medicare+Choice organization. However, regardless of the organization's size and structure, the OIG believes every Medicare+Choice organization can and should strive to accomplish the objectives and major principles underlying all of the compliance policies and procedures recommended within this guidance.

The OIG recognizes that the success of the compliance program guidance hinges on thoughtful and practical comments from those individuals and organizations that will utilize the tools set forth in this document. In a continuing effort to collaborate closely with the private sector, the OIG solicited input and support from the public in the development of this compliance program guidance.[9] Further, we took into consideration previous OIG publications, such as Special Fraud Alerts, the recent findings and recommendations in reports issued by OIG's Office of Audit Services (OAS) and Office of Evaluation and Inspections (OEI),[10] comments from HCFA, as well as the experience of past and recent fraud investigations related to managed care organizations[11] conducted by OIG's Office of Investigations (OI) and the Department of Justice.

As appropriate, this guidance may be modified and expanded as more information and knowledge is obtained by the OIG, and as changes in the law, and in the rules, policies and procedures of the Federal and State plans occur. The OIG understands Medicare+Choice organizations will need adequate time to react to these modifications and expansions and to make any necessary changes to their voluntary compliance programs. New compliance practices may eventually be incorporated into this guidance if the OIG discovers significant enhancements to better ensure an effective compliance program. We recognize the development and implementation of compliance programs in Medicare+Choice organizations often raise sensitive and complex legal and managerial issues.[12] However, the OIG wishes to offer what it believes is critical guidance for those who are sincerely attempting to comply with the relevant health care statutes and regulations.

*II. Compliance Program Elements*

The elements proposed by these guidelines are similar to those of the other OIG Compliance Program Guidances[13] and our corporate integrity agreements.[14] As noted above, the elements represent a guide that can be tailored to fit the needs and financial realities of a particular Medicare+Choice organization, large or

[7] *See* note 4.

[8] A ''Medicare+Choice plan,'' as defined in this guidance, refers to health benefits coverage offered under a policy or contract by a Medicare+Choice organization that includes a specific set of health benefits offered at a uniform premium and uniform level of cost sharing to all Medicare beneficiaries residing in the service area of the Medicare+Choice plan. *See* 42 CFR 422.2.

[9] *See* Solicitation of Information and Recommendations for Developing the OIG Compliance Program Guidance for Certain Medicare+Choice Organizations. 63 FR 50577 (9/22/98).

[10] Special Fraud Alerts are available on the OIG website at http://www.dhhs.gov/progorg/oig. The recent findings and recommendations of OAS and OEI can be located on the Internet at http://www.hhs.gov/progorg/oas/cats/hcfa.html and http://www.hhs.gov/progorg/oei, respectively.

[11] These investigations include findings based upon Medicare risk-based Health Maintenance Organizations as defined in 42 U.S.C. 1395mm.

[12] Nothing stated herein should be substituted for, or used in lieu of, competent legal advice from counsel.

[13] *See* note 1.

[14] Corporate integrity agreements are executed as part of a civil settlement agreement between the health care provider and the Government to resolve a case based on allegations of health care fraud or abuse. These OIG-imposed programs are in effect for a period of three to five years and require many of the elements included in this compliance guidance.

small, regardless of the type of services offered.

Every effective compliance program must begin with a formal commitment [15] by the Medicare+Choice organization's governing body to include *all* of the applicable elements listed below. A good faith and meaningful commitment on the part of the Medicare+Choice organization's administration, especially the governing body and the chief executive officer (CEO), will substantially contribute to the program's successful implementation. These elements are based on the seven steps of the Federal Sentencing Guidelines. [16] We believe every Medicare+Choice organization can implement all of the recommended elements and expand upon them, as appropriate.

At a minimum, comprehensive compliance programs should include the following seven elements:

(1) The development and distribution of written standards of conduct, as well as written policies and procedures, that promote the Medicare+Choice organization's commitment to compliance and that address specific areas of potential fraud (*e.g.*, the marketing process, and underutilization);

(2) The designation of a chief compliance officer and other appropriate bodies, *e.g.*, a corporate compliance committee, charged with the responsibility of operating and monitoring the compliance program and who report directly to the CEO and the governing body;

(3) The development and implementation of regular, effective education and training programs for all affected employees;

(4) The development of effective lines of communication between the compliance officer and all employees, including a process, such as a hotline, to receive complaints (and the adoption of procedures to protect the anonymity of complainants and to protect callers from retaliation);

(5) The use of audits or other risk evaluation techniques to monitor compliance and assist in the reduction of identified problem areas;

(6) The development of disciplinary mechanisms to consistently enforce standards and the development of policies addressing dealings with sanctioned and other specified individuals; and

(7) The development of policies to respond to detected offenses and to initiate corrective action to prevent similar offenses.

A. Written Policies and Procedures

Every compliance program should require the development and distribution of written compliance policies, standards and practices that identify specific areas of risk and vulnerability to the Medicare+Choice organization. These policies should be developed under the direction and supervision of the chief compliance officer and the compliance committee and, at a minimum, should be provided to all individuals who are affected by the particular policy at issue, including the Medicare+Choice organization's agents and independent contractors.[17]

Medicare+Choice organizations maintain ultimate responsibility for adhering to and otherwise fully complying with all terms and conditions of their contract with HCFA.[18] It is with this in mind that the OIG strongly recommends that the Medicare+Choice organization coordinate with its first tier and downstream providers to establish compliance responsibilities,[19] in addition to the contractual responsibilities required by HCFA.[20] For example, OIG recommends that the Medicare+Choice organization coordinate with its contracting providers regarding the steps that should be taken by the providers to verify and confirm to the Medicare+Choice organization the accuracy of information and data submitted to the Medicare+Choice organization concerning patient encounters and fee-for-service claims. Once the responsibilities have been clearly delineated, they should be formalized in legally enforceable written arrangement between the health care provider and the Medicare+Choice organization. The OIG recommends this document enumerate those functions that are shared responsibilities and those that are the sole responsibility of the Medicare+Choice organization.

1. Standards of Conduct

Medicare+Choice organizations should develop standards of conduct for all affected employees that include a clearly delineated commitment to compliance by the organization's senior management and its divisions. To help communicate a strong and explicit organizational commitment to compliance goals and standards, the Medicare+Choice organization's governing body, CEO, chief operating officer (COO), general counsel, chief financial officer (CFO) and other senior officials should be directly involved in the development of standards of conduct.

The standards should function in the same fashion as a constitution, *i.e.*, as a foundational document that details the fundamental principles, values and framework for action within an organization, as well as the organization's mission and goals. The standards should also articulate the Medicare+Choice organization's commitment to comply with all Federal and State standards, with an emphasis on preventing fraud and abuse. The standards should not only address compliance with statutes and regulations, but should also set forth broad principles that guide employees in conducting business professionally and properly. In short, the standards should promote integrity, support objectivity and foster trust. Furthermore, a Medicare+Choice organization's standards of conduct should reflect a commitment to the highest quality health care delivery, as evidenced by its quality, reliability and timeliness.

2. Written Policies for Risk Areas

As part of its commitment to compliance, Medicare+Choice organizations should establish a comprehensive set of written policies that address all applicable statutes, rules and program instructions that apply to each function or department of the Medicare+Choice organization.[21] The

[15] Formal commitment may include a resolution by the board of directors, where applicable. A formal commitment does include the allocation of adequate resources to ensure that each of the elements is addressed.

[16] *See* United States Sentencing Commission Guidelines, *Guidelines Manual*, 8A1.2, comment. (n.3(k)). The Federal Sentencing Guidelines are detailed policies and practices for the Federal criminal justice system that prescribe appropriate sanctions for offenders convicted of Federal crimes.

[17] According to the Federal Sentencing Guidelines, an organization must have established compliance standards to be followed by its employees and other agents in order to receive sentencing credit. The Guidelines define ''agent'' as ''any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization.'' *See* United States Sentencing Commission Guidelines, *Guidelines Manual*, 8A1.2, Application Note 3(d).

[18] *See* 42 CFR 422.502(i).

[19] At a minimum, the Medicare+Choice organization should send a copy of its compliance program manual to all of its health care providers. The Medicare+Choice organization should also coordinate with its health care providers in the development of a training program, an audit plan and policies for investigating misconduct.

[20] *See* 42 CFR 422.502(i)(3)–(4).

[21] This includes, but is not limited to, the Medicare+Choice provisions and the fraud and abuse provisions of the Balanced Budget Act of 1997, Pub.L. 105–33; the civil False Claims Act, 31 U.S.C. 3729–3733; the criminal false claims statutes, 18 U.S.C. 287, 1001; the fraud and abuse provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub.L. 104–191; and the civil monetary penalties in the Social

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policies should address specific areas of concern, such as marketing practices and data collection and submission processes. In contrast to the standards of conduct, which are designed to be a clear and concise collection of fundamental standards, the written policies should articulate specific procedures personnel should follow when performing their duties.

In order to determine what policies and procedures are needed, the OIG recommends that Medicare+Choice organizations conduct a comprehensive self-administered risk analysis or contract for an independent risk analysis by experienced health care consulting professionals. This risk analysis should identify and rank the various compliance and business risks the company may experience in its daily operations. A Medicare+Choice organization's prior history of noncompliance with applicable statutes, regulations and Federal health care program requirements may indicate additional types of risk areas where the organization may be vulnerable and may require necessary policy measures to prevent avoidable recurrence.[22]

The fact that Medicare+Choice organizations may be both providers and insurers of health care increases the number and type of risk areas to which a Medicare+Choice organization must be attuned, as well as the type of auditing and monitoring procedures that must be implemented, in the development of its compliance efforts. For example, an individual Medicare+Choice organization may contract with a variety of providers with different specialities and, consequently, must consider a variety of different risk areas.

The regulations and operational policies issued by HCFA that implement the Medicare+Choice program are very comprehensive and should serve as the basis for the policies and procedures of a Medicare+Choice organization.[23] The legal and policy requirements that organizations must meet to qualify as a Medicare+Choice organization are articulated in documentation promulgated by HCFA and other Federal agencies and should be considered de facto risk areas. Included among these risk areas are: (1) The election process; (2) benefits and beneficiary protections; (3) quality assurance; (4) premiums and cost sharing; (5) solvency, licensure and other State regulatory issues; (6) claims processing; and (7) appeals and grievance procedures. Given the detailed nature of the rules and regulations, we have not attempted in this document to identify each and every policy that should be established by a Medicare+Choice organization. Rather, based on a review OIG audits, investigations and evaluations, we have identified the following areas of particular concern to OIG that the Medicare+Choice organization should consider in developing its written policies and procedures:[24]

- Marketing materials and personnel;
- Selective marketing and enrollment;
- Disenrollment;
- Underutilization and quality of care;
- Data collection and submission processes;
- Anti-kickback statute and other inducements; and
- Anti-dumping statute.

As note above, the list is not all-encompassing and the Medicare+Choice organization should conduct additional surveys and statistical analysis specifically tailored to the organization's beneficiary population and organizational structure.[25]

The following sections provide specific guidance regarding the types of policies that should be implemented by Medicare+Choice organizations.

a. Marketing Materials and Personnel

While each Medicare+Choice organization must comply with all of HCFA's detailed requirements relating to marketing their plans,[26] OIG is particularly concerned that organizations have policies regarding: (1) the completeness and accuracy of the marketing materials; and (2) marketing personnel.

Accurate and useful information is crucial to the success of the Medicare+Choice program. OIG is very concerned that Medicare+Choice organizations correctly and completely describe plan information in any marketing materials or other materials distributed to individuals once enrolled in the plan. Medicare+Choice organizations that misrepresent or falsify information submitted to HCFA, individuals or entities are subject to civil monetary penalties (CMPs).[27]

The submission of inaccurate or misleading information is of particular concern in light of the recent study conducted by the General Accounting Office (GAO) that examined 16 managed care organizations and found that all organizations had distributed materials containing inaccurate or incomplete benefit information.[28] It should be noted that HCFA had reviewed and approved the materials from all the organizations in the GAO study. Given this finding, Medicare+Choice organizations should take special care to ensure that all marketing materials are accurate, notwithstanding whether the materials have been approved by HCFA.[29]

HCFA considers marketing materials to include any material used by a Medicare+Choice organization to contact a Medicare beneficiary. As such, marketing materials go beyond the public's general conception of marketing materials and include general circulation brochures, leaflets, newspapers, magazines, television, radio, billboards, yellow pages, the Internet, slides and charts, and leaflets for distribution by providers. Such materials also include membership communication materials such as membership rules, subscriber agreements, or confirmation of enrollment.[30] Accordingly,

Security Act, 42 U.S.C. 1320a–7a and 42 U.S.C. 395w–27(g). *See also* 42 CFR 422.1–422.312.

[22] ''Recurrence of misconduct similar to that which an organization has previously committed casts doubt on whether it took all reasonable steps to prevent such misconduct'' and is a significant factor in the assessment of whether a compliance program is effective. *See* United States Sentencing Commission Guidelines, *Guidelines Manual,* 8A1.2, Application Note 3(7)(ii).

[23] Medicare+Choice organizations should regularly access the HCFA managed care website for updates on operational policies and procedures. Operational Policy Letters can be located on HCFA's website at http://www.hcfa.gov/medicare/mgd-ops.htm.

[24] Medicare+Choice organizations may also want to consult the OIG's Work Plan when conducting the risk assessment. The OIG Work Plan details the various projects the OIG currently intends to address in the fiscal year. It should be noted that the priorities in the Work Plan are subject to modification and revision as the year progresses and the Work Plan does not represent a complete or final list of areas of concern to the OIG. The Work Plan is currently available on the Internet at http://www.dhhs.gov/progorg/oig.

[25] Although many of these areas apply specifically to Medicare+Choice organizations, many of the areas identified below have analogous issues in non-Medicare organizations. Medicare+Choice organizations that provide private managed care products should establish additional policies and procedures for risk areas that apply specifically to those areas. Some overlap with Medicare+Choice policies will likely occur, however Medicare+Choice organizations should segregate any policies and procedures for which HCFA has instituted specific reporting requirements for the Medicare population.

[26] Medicare+Choice organizations should ensure that they conform to fair marketing standards as set forth in the statute, the Medicare Managed Care National Marketing Guide (Marketing Guide)(which can be located on the HCFA Managed Care website at http://www.hcfa.gov/medicare/mgd-ops.htm) and all HCFA Operational Policy Letters affecting marketing matters.

[27] 42 U.S.C. 1395w–27(g).

[28] ''Medicare+Choice: New Standards Could Improve Accuracy and Usefulness of Plan Literature.'' (GAO/HEHS–99–92)(April 1999).

[29] Medicare+Choice organizations may not distribute marketing materials or election forms unless they are approved by HCFA. 42 CFR 422.80.

[30] 42 CFR 422.80(b).

Medicare+Choice organizations should carefully scrutinize all of these materials for completeness, accuracy and compliance with HCFA rules.

In verifying that marketing materials meet all HCFA requirements, Medicare+Choice organizations should ensure that the materials contain an adequate written description of rules, procedures, basic benefits and services, and an explanation of the grievance and appeals process.[31] Of particular concern to HCFA and OIG is that the concept of ''lock-in'' is clearly explained in all marketing material. Many Medicare beneficiaries are unfamiliar with the notion that managed care may limit their health care provider choices. Describing the process of selecting a primary care physician and the limitations that this places on a Medicare+Choice enrollee's choice of provider will significantly reduce the unmet expectations of Medicare beneficiaries.

Another important concept to include in the marketing materials is the fact that the beneficiary may be terminated from enrollment in the plan due to the decision of the Medicare+Choice organization not to renew its contract with HCFA, or due to HCFA's decision to refuse to renew the contract.[32] This termination can affect the enrollee's [33] eligibility for supplemental insurance and other benefits.

Second, in light of the critical role that marketing personnel play in representing the plan to Medicare enrollees, the Medicare+Choice organization must take all appropriate steps to ensure that marketing personnel are presenting clear, complete and accurate information to potential enrollees. To that end, OIG strongly encourages Medicare+Choice organizations to employ their own marketing personnel, as opposed to contracting these responsibilities to outside entities.[34] This provides the Medicare+Choice organization the necessary control to ensure that these individuals meet all HCFA guidelines. Similarly, it safeguards Medicare beneficiaries from practices that could seriously endanger their access to health care to which they are entitled, and their ability to acquire accurate and complete information regarding their health care options.

Medicare+Choice organizations should also be aware that OIG and HCFA strongly discourage the use of physicians as marketing agents for several reasons: (1) physicians are usually not fully aware of membership plan benefits and costs; (2) physicians may not be the best source of membership information about their patients; (3) when a physician acts outside his or her traditional role as care provider, the physician's patients may be confused as to when the physician is acting as an agent of the plan, and when the physician is acting to further the interests of the patient; and (4) a physician's knowledge of a patient's health status increases the potential for discriminating in favor of Medicare beneficiaries with positive health status when acting as a marketing agent.[35] Therefore, the organization should develop procedures to prevent the use of physicians in this way.

b. Selective Marketing and Enrollment

OIG is very concerned about the practice known as ''cherry-picking,'' or selective marketing,[36] in which Medicare+Choice organizations discriminate in the marketing and enrollment process based upon an enrollee's degree of risk for costly or prolonged treatment.[37] Except for individuals who have been medically determined to have end-stage renal disease, a Medicare+Choice organization may not deny, limit or condition the coverage or furnishing of benefits to individuals eligible to enroll in a Medicare+Choice plan offered by the organization on the basis of any factor that is related to health status, including, but not limited to, the following: (1) Medical condition (including mental illness); (2) claims experience; (3) receipt of health care; (4) medical history; (5) genetic information; (6) evidence of insurability; and (7) disability.[38] Engaging in practices that would reasonably be expected to have the effect of denying or discouraging enrollment by eligible individuals whose medical condition or history indicates the need for substantial future medical services subjects the Medicare+Choice organization to a CMP.[39]

Certain types of practices clearly fall into the category of cherry-picking and Medicare+Choice organizations should implement policies to prohibit such practices. For example, organizations should prohibit employees from conducting medical screening, *i.e.*, asking the beneficiary medical questions prior to enrollment.[40] In a 1996 survey, the OIG found that such screening for health status at application was reported by 18 percent of beneficiaries. While this represented a reduction from the 1993 level of 43 percent, it still represents a potentially serious problem.[41]

Another way in which Medicare+Choice organizations may inappropriately target healthier beneficiaries is by marketing their plans in places where healthy enrollees would be more likely to be present, such as at health and exercise clubs, or in areas that are difficult to access for people with disabilities (*e.g.*, upper floors of buildings that do not have elevators).[42] Similarly, organizations may inappropriately provide inducements to potential enrollees in a way that would encourage younger, healthier beneficiaries to enroll in the plan. For example, the offering of free gym memberships or kayaking or other sporting lessons would appeal to a healthy class of enrollees and discriminate against those who would not be interested in such activities.[43]

[31] 42 CFR 422.80(c).

[32] 42 CFR 422.80(c)(3).

[33] Periodic on-site visits of the Medicare+Choice organization's operations, bulletins with compliance updates and reminders, distribution of audiotapes or videotapes on different risk areas, lectures at management and employee meetings, circulation of recent health care articles covering fraud and abuse and innovative changes to compliance training are various examples of approaches and techniques the compliance officer can employ for the purpose of ensuring continued interest in the compliance program and the Medicare+Choice organization's commitment to its principles and policies.

[34] It should be noted that Medicare+Choice organizations have ultimate responsibility for the acts and omissions of its marketing agents. See 42 CFR 422.502(i).

[35] *See* Marketing Guide, Chapter IV.

[36] OIG is also concerned about a similar problem, known as ''gerrymandering,'' which is an attempt to eliminate certain high dollar risk areas from the Medicare+Choice organization's service area. Medicare+Choice organizations should be sure to have policies in place to prohibit such practices.

[37] Although the Medicare+Choice program has attempted to alleviate many of the selective marketing practices through the use of risk adjustment, the phase-in period for risk-adjustment virtually assures that this will remain a troubling issue at least through 2004.

[38] *See* 42 U.S.C. 1395w–22(b)(1); 42 CFR 422.110.

[39] 42 U.S.C. 1857(g)(1)(D).

[40] This screening can be done in a number of ways, such as by using cards or coupons requesting medical and other information as part of a survey to potential enrollees.

[41] ''Beneficiary Perspectives of Medicare Risk HMOs 1996.'' (OEI–06–95–00430) (March 1998).

[42] In fact, Medicare+Choice organizations are required to allocate part of their resources to marketing to the Medicare population with disabilities and beneficiaries aged 65 and over. 42 CFR 422.80(e)(2)(i).

[43] The statute prohibits the provision of cash or other monetary rebates as an inducement for enrollment in the plan. *See* 42 U.S.C. 1395w–21(h)(4)(A). However, HCFA allows Medicare+Choice organizations to give Medicare beneficiaries nominal value gifts, provided that the plan offers these gifts whether or not the beneficiary enrolls in the plan. HCFA defines nominal value as an item having little or no resale value (generally, less than $10), which cannot be readily converted into cash. *See* Marketing Guide, Chapter II. The use of inducements is also discussed in Section II.B.2.f.—Anti-kickback and Other Inducements.

Other examples of cherry-picking would be: (1) attempts to give enrollment priority to newly eligible Medicare beneficiaries (who are theoretically younger and healthier); (2) the tracking of costs incurred by enrollees who were enrolled in different settings (*e.g.*, at the health fair, or at a health club), which could be used to target healthier enrollees in the future; or (3) re-enrollment campaigns targeting past plan subscribers who had low medical costs. There are many other subtle ways in which a Medicare+Choice organization may try to enroll healthy patient populations and the organization should implement policies to prohibit such practices.

c. Disenrollment

In general, Medicare+Choice organizations are prohibited from disenrolling, or requesting or encouraging (either by action or inaction) an individual to disenroll from any plan it offers.[44] If a Medicare+Choice organization acts to expel or refuses to reenroll an individual in violation of the statute, a civil monetary penalty can be imposed on the organization.[45] OIG is particularly concerned about disenrollment in light of its recent review, which revealed that there was a problem with disenrollment of beneficiaries just prior to receiving expensive inpatient services.[46]

In this review, OIG found that Medicare paid for inpatient hospital services amounting to $224 million in fee-for-service (FFS) payments within three months of beneficiaries' disenrollment from six risk plans during 1991 through 1996. Had these beneficiaries not disenrolled, Medicare would have paid the HMOs $20 million in monthly capitation payments. Had the beneficiaries remained in the HMOs, Medicare would have saved $204 million in expenditures. Included in the Medicare FFS payments were $41 million for beneficiaries who disenrolled, had FFS procedures performed, and then reenrolled into another or the same managed care plan.

While this study did not identify the reasons for the disenrollment as part of this review, one partial explanation of the review is that some managed care plans may be encouraging sicker beneficiaries to disenroll as a way to avert their own costs at a high cost to the Medicare system.

Each Medicare+Choice organization must implement policies to ensure that inappropriate disenrollment does not occur. Such policies should include clarification of when it is appropriate for medical personnel to discuss the concept of disenrollment. Generally speaking, OIG believes it would be inappropriate for medical personnel to initiate discussion of disenrollment or to promote disenrollment except in the rare circumstance where the Medicare+Choice organization cannot provide the covered medical items or services needed by the patient.

d. Underutilization and Quality of Care

Medicare+Choice organizations must ensure that all covered services are available and accessible to all enrollees.[47] OIG views the inappropriate withholding or delay of services, known as underutilization or ''stinting,'' as a serious concern.[48] Examples of practices that can lead to underutilization and poor quality include the failure to employ or contract with sufficient institutional and individual providers to accommodate all enrollees, the failure to provide geographically reachable services to enrollees, the delay in approving or failure to approve referrals for covered services, the establishment of utilization review procedures that are so burdensome that an enrollee could not reasonably be expected to fulfill the requirements, and the categorical denial of payment of claims.

There are a wide variety of policies that a Medicare+Choice organization should implement to be sure it is providing all medically necessary services to its enrollees. The regulations and guidelines that implement the Medicare+Choice program contain numerous provisions that deal with this issue. While we have not attempted to develop a comprehensive list in this document, we would like to highlight three types of policies that Medicare+Choice organizations should develop that may help address underutilization and quality of care.

First, Medicare+Choice organizations should have policies that prohibit interference with health care professionals' advice to enrollees. Also known as the ''gag rule,'' this prohibition extends to advice regarding the patient's health status, medical care, and treatment options, the risks, benefits and consequences of treatment or non-treatment, or the opportunity for the individual to refuse treatment and to express preferences about future treatment options.[49] Failure to comply with this requirement can lead to sanctions.[50]

Second, Medicare+Choice organizations should be sure, to the extent that they utilize physician incentive plans (PIPs) in their payment arrangements with individual physicians or physician groups, that they comply with all applicable regulations. The PIPs raise utilization concerns because they are defined as ''any compensation arrangement that may directly or indirectly have the effect of reducing or limiting services provided to plan enrollees.'' [51] Any PIP operated by a Medicare+Choice organization must comply with the following requirements. First, it may make no payments to physicians (such as offerings of monetary value, including, but not limited to, stock options or waivers of debt [52]) to reduce or limit medically necessary services. Second, if the PIP puts a physician or physician group at ''substantial financial risk'' [53] for referral services, the Medicare+Choice organization must: (1) survey current and previously enrolled members to assess access to and satisfaction with the quality of services; and (2) assure that there is adequate and appropriate stop-loss protection.[54] Finally, Medicare+Choice organizations must disclose certain information regarding their PIPs. These disclosure requirements apply to direct contracting arrangements, as well as subcontracting arrangements.[55]

In general, Medicare+Choice organizations should take all necessary steps to ensure that they comply with the Guidance on Disclosure of Physician Incentive Plan, the Guidance on Surveys required by the Physician Incentive Plan Regulation and the Physician Incentive Plan Regulation Requirements.[56]

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[44] Medicare+Choice organizations are entitled to disenroll individuals under certain circumstances, *e.g.*, failure to pay premiums or engagement in disruptive behavior. 42 CFR 422.74.

[45] 42 U.S.C. 1857(g)(1)(C).

[46] ''Review of Inpatient Services Performed on Beneficiaries After Disenrolling from Medicare Managed Care.'' (A–07098–01256) (May 1999).

[47] 42 U.S.C. 1395w–22.

[48] Medicare+Choice organizations can be subject to sanction for failing substantially to provide medically necessary items and services that are required to be provided, if the failure has adversely affected (or has the substantial likelihood of adversely affecting) the individual. 42 U.S.C. 1395w–27(g)(1)(A).

[49] 42 U.S.C. 1395w–22(j)(3), 42 C.F.R. § 422.206.

[50] 42 U.S.C. 1395w–27(g)(1)(F).

[51] *See* 42 CFR 422.208.

[52] *See* 42 U.S.C. 1395w–22(j)(4); 42 CFR 422.208.

[53] ''Substantial financial risk'' threshold is set at 25 percent of potential payments for covered services, regardless of the frequency of assessment (*i.e.*, collection) or distribution of payments. *See* 42 CFR 422.208.

[54] *See* 42 CFR 422.208(c).

[55] *See* 42 CFR 422.210(a).

[56] These documents can be found on the HCFA managed care website at http://www.hcfa.gov/medicare/mgd-ops.htm. Disclosure forms can be located at HCFA's website at http://www.hcfa.gov/medicare/physincp/pip-info.htm. Medicare+Choice organizations may elect paperless PIP disclosure.

Finally, OIG is aware of cases in which beneficiaries have received covered services from individuals that were not appropriately licensed. Given the serious quality of care implications of this type of practice, OIG is particularly concerned that Medicare+Choice organizations have procedures for the selection of providers, including criteria for the credentialing of providers. This process should include an application, verification of information and a site visit, where applicable.[57] The information that must be verified includes that the individual has a valid license to practice, clinical privileges in good standing and appropriate educational qualifications.

e. Data Collection and Submission Processes

The regulations implementing the Medicare+Choice program contain numerous requirements relating to the data collection and submission process, ranging from a requirement for an effective system for receiving, controlling, and processing election forms[58] to requirements for the timely submission of disenrollment notices.[59] These requirements cover the gamut of requirements with which a Medicare+Choice organization must comply and are too detailed to enumerate in this document. Medicare+Choice organizations should establish a policy that all required submissions to HCFA be accurate, timely and complete and that all appropriate reporting requirements are met.[60]

OIG is particularly concerned that Medicare+Choice organizations submit accurate information when that data determines the amount of payment received from HCFA. The regulations require that when a Medicare+Choice organization requests payment under the contract, the CEO or CFO must certify the accuracy, completeness and truthfulness of relevant data, including enrollment data, encounter data, and information provided as part of an adjusted community rate (ACR) proposal.[61] When a Medicare+Choice organization submits this type of data to HCFA, it is making a ''claim'' for capitation payment in the amount dictated by the data submitted, or in the case of the ACR submission, a ''claim'' to retain the portion of the capitation amount that is under the ACR amount, rather than providing additional benefits. When a Medicare+Choice organization is claiming payment (or the right to retain payment) based upon information submitted to HCFA, it must take responsibility for having taken reasonable steps to assure the accuracy of this information. The attestation forms developed by HCFA for this purpose require certification that the information submitted is true and accurate based on best knowledge, information, and belief.

The requirement that the CEO or CFO certify as to the accuracy, completeness and truthfulness of data, based on best knowledge, information and belief, does not constitute an absolute guarantee of accuracy. Rather, it creates a duty on the Medicare+Choice organization to put in place an information collection and reporting system reasonably designed to yield accurate information. Furthermore, the Medicare+Choice organization must conduct audits and spot checks of this system to verify whether it is yielding accurate information.

The knowing submission of false information to HCFA can lead to serious criminal or civil penalties.[62] Medicare+Choice organizations should be sure to implement policies so that the enrollment, encounter and ACR data submitted to HCFA is accurate, complete and truthful. While information from a variety of sources can affect this data, Medicare+Choice organizations should take note of two reports issued by the OIG that have found problems in two pieces of this data.

First, OIG recommends that Medicare+Choice organizations have policies and procedures in place that ensure that the administrative component of the ACR is calculated accurately.[63] As part of this process, Medicare+Choice organizations should have clearly defined criteria for claiming reimbursement for their administrative costs. These costs should not include any costs that are directly associated with furnishing patient care. All such costs should be allocated to the applicable operating component. The OIG has articulated serious concerns about the methodology used by managed care organizations in computing their administrative rate on the ACR proposal.[64] For example, computing an administrative rate based on the use of a medical utilization factor could generate a payment that is almost three times what would be charged on the commercial side. The OIG believes that the allocation of ''administration'' should be determined in accordance with the Medicare program's longstanding principle that Medicare only pay its applicable or fair share of needed costs.

Second, OIG recommends that Medicare+Choice organizations have adequate internal controls in place to ensure that the institutional status of beneficiaries is reported accurately.[65] A recent report issued by OIG estimated that risk-based HMOs received Medicare overpayments of $22.2 million for beneficiaries incorrectly classified as institutionalized.[66] The incorrect classification was largely due to deficiencies in the HMOs internal controls in two areas: (1) Verification of beneficiaries' institutional status; and (2) reporting of institutional beneficiaries to HCFA. The results were based on audits of eight statistically selected HMOs.

f. Anti-kickback Statute and Other Inducements

The anti-kickback statute provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit or receive remuneration to induce the referral of business reimbursable under a Federal health care program (including Medicare and Medicaid).[67] The anti-

The PIP Data Entry Software is available on the Internet at http://www.fu.com/HPMS.

[57] 42 CFR 422.204.

[58] 42 CFR 422.60(e).

[59] 42 CFR 422.66(b)(3)(i).

[60] On a related topic, Medicare+Choice organizations should also be sure that their computer systems are Year 2000 (Y2K) compliant. A May 1999 OIG report indicates that based on a survey of Medicare managed care organizations, only 22 percent were Y2K ready, with two-thirds of the remainder reporting that they will be ready by December 31, 1999. The majority of the respondents were unaware of the Y2K readiness of their subcontractors. ''Y2K Readiness of Managed Care Organizations.'' (OEI–005–98–00590) (May 1999).

[61] 42 CFR 422.502(l) and (m). *See* Contract for Year 2000, Attachments A, B and C.

[62] Falsification of documentation in any application for any benefit or payment under a Federal health care program is a Federal offense punishable by not more than $25,000 or imprisonment for 5 years, or both. *See* 42 U.S.C. 1320a–7b. In addition, a CMP can be imposed for the misrepresentation or falsification of information submitted to HCFA under Medicare+Choice. *See* 42 U.S.C. 1395w–27(g)(1)(E).

[63] The administrative component of the ACR covers any management, financial or other costs that are incurred by or allocated to a business unit for the management or administration of the business unit as a whole.

[64] *See e.g.,* ''Administrative Costs Submitted by Risk-Based Health Maintenance Organizations on the Adjusted Community Rate Proposals are Highly Inflated.'' (A–14–97–00202) (July 1998).

[65] This will remain a concern until risk adjustment is fully implemented.

[66] ''Review of Medicare Managed Care Payments for Beneficiaries with Institutional Status.'' (A–05–98–00046) (April 1999).

[67] 42 U.S.C. 1320a–7b(b). If it is determined that a party has violated the anti-kickback statute, the individual or entity can be excluded from participation in the Medicare and other Federal health care programs (as defined in 42 U.S.C.

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kickback statute potentially applies to many managed care arrangements because a common strategy of these arrangements is to offer physicians, hospitals and other providers increased patient volume in return for substantial fee discounts. Because discounts to managed care organizations can constitute ''remuneration'' within the meaning of the anti-kickback statute, a number of health care providers have expressed concern that many relatively innocuous, or even beneficial, commercial managed care arrangements implicate the statute and may subject them to criminal prosecution and administrative sanctions.

The OIG recognizes that when managed care organizations are paid a capitated amount for all of the services they provide regardless of the dates, frequency or type of services, there is no incentive for them to overutilize. In any event, even if overutilization occurs, the Federal health care programs are not at risk for these increased costs. Accordingly, OIG will be issuing a safe harbor from the anti-kickback statute that will provide protection for certain financial arrangements between managed care organizations (including Medicare+Choice organizations offering coordinated care plans) and individuals or entities with whom they contract for the provision of health care items or services, where a Federal health care program pays such organizations on a capitated basis.[68]

In general, the safe harbor protects payments between managed care organizations (including Medicare+Choice organizations offering coordinated care plans) and individuals or entities with which it has direct contracts to provide or arrange for the provision of items or services.[69] While this is a broad exception, there are three important limitations.

The first significant limitation is that there is no protection if the financial arrangements under the managed care agreement are implicitly or explicitly part of a broader agreement to steer fee-for-service Federal health care program business to the entity giving the discount to induce the referral of managed care business. Specifically, we understand that most managed care organizations have multiple relationships with their contractors and subcontractors for the provision of services for various product lines, including non-federal HMOs, preferred provider organizations (PPOs) and point of service networks. Consequently, although neither a managed care organization receiving a capitated payment from a Federal health care program nor its contractors or subcontractors has an incentive to overutilize items or services or pass additional costs back to the Federal health care programs under the capitated arrangement, we are concerned that a managed care organization or contractor may offer (or be offered) a reduced rate for its items or services in the Federal capitated arrangement in order to have the opportunity to participate in other product lines that do not have stringent payment or utilization constraints. This practice is a form of a practice known as ''swapping;'' in the case of managed care arrangements, low capitation rates could be traded for access to additional fee-for-service lines of business. We are concerned when these discounts are in exchange for access to fee-for-service lines of business, where there is an incentive to overutilize services provided to Federal health care program beneficiaries.

For example, we would have concerns where an HMO with a Medicare risk contract under Medicare Part C also has an employer-sponsored PPO that includes retirees and requires participating providers to accept a low capitation rate for the Medicare HMO risk patients in exchange for access to the Medicare fee-for-service patients in the PPO. Although in such circumstances the cost to the Medicare program for the risk-based HMO beneficiaries will not be increased, there may be increased expenditures for Medicare beneficiaries in the PPO arrangement, because the providers may have an incentive to increase services to the Medicare enrollees in the PPO to offset the discounted rates to the Medicare HMO. Accordingly, such arrangements could violate the anti-kickback statute and should not be protected.

A second limitation on the regulatory safe harbor protection is that it only applies to remuneration for health care items and services and those items or services reasonably related to the provision of health care items and services. It does not cover marketing services or any services provided prior to a beneficiary's enrollment in a health plan.

Finally, the broad protection is limited to risk-based managed care plans that do not claim any payment from a Federal health care program other than the capitated amount set forth in the managed care organization's agreement with the Federal health care program. Where the managed care plan, its contractors or its subcontractors are permitted to seek additional payments from any of the Federal health care programs, the regulatory safe harbor protection is significantly more limited. For example, protection is not extended to arrangements with subcontractors when the contract under section 1876 of the Social Security Act is cost-based or where the prime contract is protected solely because the contracting entity is a Federally-qualified HMO. In the first instance, reimbursement from the Federal health care program is based on costs, and in the latter case, services for Medicare enrollees are reimbursed on a fee-for-services basis. In both instances, reimbursement will increase with utilization, thus providing the same incentive to overutilize as any fee-for-service payment methodology.

While the new safe harbor will provide protection from the anti-kickback statute for most arrangements between Medicare+Choice organizations and their contractors, Medicare+Choice organizations should also have policies in place that ensure that any incentives offered to beneficiaries and potential beneficiaries do not run afoul of the anti-kickback statute or the new civil monetary penalty relating to incentives to beneficiaries.[70] The CMP was enacted in section 231(h) of HIPAA (42 U.S.C. 320a–7a(a)(5)) and imposes sanctions against individuals or entities that offer remuneration to a program beneficiary that they know, or should know, will influence the beneficiary's decision to order or receive items or services from a particular provider, practitioner or

1320a–7b(f)). 42 U.S.C. 1320a–7(b)(7). In addition, there is an administrative CMP provision for violating the anti-kickback statute. 42 U.S.C. 1320a–7a(a)(7).

[68] This safe harbor was developed in accordance with section 216 of HIPAA and section 14 of the Medicare and Medicaid Patient and Program Protection Act of 1987 (Pub. L. 100–93) through a negotiated rulemaking process that began in the spring of 1997. For a more detailed description of the negotiated rulemaking, see the Committee Statement of the Negotiated Rulemaking Committee on the Shared Risk Exception (January 22, 1998), which can be found on the Internet at http://www.dhhs.gov/progorg/oig.

[69] In addition, arrangements between direct contractors and all subcontractors or successive tiers of subcontractors are protected, as long as the arrangement is for the provision of health care items or services that are covered by the arrangement between the direct contractor and the managed care organization and the arrangement meets the requirements applicable to arrangements between the direct contractor and the managed care organization.

[70] Our concerns regarding the use of inducements in a manner that leads to enrollment of only healthy beneficiaries, such as offering memberships to exercise clubs for purposes of patient screening, is discussed above in Section II.B.2.b.-Selective Marketing and Enrollment.

supplier reimbursable by Medicare or the State health care programs.

Pending the publication of the final rule implementing this CMP, we can provide the following guidance. It is our view that organizations that provide incentives to Federal health care program beneficiaries to enroll in a *plan* are not offering remuneration to induce the enrollees to use a *particular provider, practitioner or supplier.* Accordingly, we anticipate that organizations that provide incentives to enroll in a plan will not be subject to sanctions under this provision. However, incentives provided by organizations to induce a beneficiary to use a particular provider, practitioner or supplier once the beneficiary has enrolled in a plan are within the purview of this CMP and are prohibited if they do not meet an exception. For example, incentives given to beneficiaries by a particular physician group within the physician panel of a Medicare+Choice organization to encourage the beneficiary to use that physician group over another physician in the panel would be prohibited.

g. Anti-Dumping

The OIG and HCFA believe that there may be special concerns regarding the provision of emergency services to enrollees of Medicare+Choice plans. The anti-dumping statute [71] imposes specific obligations on Medicare-participating hospitals that offer emergency services to individuals presenting themselves at the hospital seeking possible emergency treatment. While the obligations under the anti-dumping statute prohibit a hospital from inquiring into the patient's method of payment or insurance status, it has come to our attention that many hospitals routinely seek authorization from a Medicare+Choice enrollee's primary care physician or from the Medicare+Choice organization when a Medicare+Choice enrollee requests emergency services. The OIG and HCFA are cognizant that many managed care organizations require their enrollees to seek prior authorization for some medical services, including emergency services and that there are circumstances when patients should be informed of their potential financial liability. However, both the OIG and HCFA have concerns that a Medicare+Choice enrollee may be unduly influenced by hospital personnel to leave the hospital without obtaining necessary care.[72]

It is the view of OIG and HCFA that the anti-dumping statute requires that notwithstanding the terms of any managed care contractual arrangements, the provisions of the anti-dumping statute govern the obligations of hospitals to screen and provide stabilizing treatment to any patient presenting at an emergency facility. No contract between a hospital and managed care organization can excuse the hospital from the anti-dumping statute obligations. Once a Medicare+Choice enrollee comes to the hospital that offers emergency services, the law requires that the hospital must provide the services required under the anti-dumping statute without regard to the patient's insurance status or any prior authorization of such insurance. All Medicare+Choice organizations should have policies in place to ensure that these requirements are met.

Medicare+Choice organizations should be particularly careful of these requirements in the event that they participate in the so-called ''dual staffing'' of emergency departments. Dual staffing refers to the situation where hospitals have entered into arrangements allowing a managed care organization to station its own physicians in the hospital's emergency department for the purpose of screening and treating managed care enrollees. Implementation of dual staffing raises some concerns under the anti-dumping statute, particularly where different procedures and protocols have been established for each staff.

3. Retention of Records and Information Systems

Medicare+Choice organizations' compliance programs should provide for the implementation of a records retention system. This system should establish policies and procedures regarding the creation, distribution, retention, storage, retrieval and destruction of documents. The three types of documents developed under this system should include: (1) All records and documentation required by either Federal or State law and the program requirements of Federal and State health plans; (2) records listing the persons responsible for implementing each part of the compliance plan; and (3) all records necessary to protect the integrity of the Medicare+Choice organization's compliance process and confirm the effectiveness of the program. The documentation necessary to satisfy the third requirement includes: evidence of adequate employee training; reports from the Medicare+Choice organization's hotline; results of any investigation conducted as a consequence of a hotline call; modifications to the compliance program; self-disclosure; all written notifications to providers regarding compliance activities; [73] and the results of the Medicare+Choice organization's auditing and monitoring efforts.

In light of the increasing reliance on electronic data interchange by the health care industry, Medicare+Choice organizations should take particular care in establishing procedures for maintaining the integrity of its data collection systems. This should include procedures for regularly backing-up data (either by diskette, restricted system or tape) collected in connection with all aspects of the Medicare+Choice program requirements.

4. Compliance as an Element of a Performance Plan

Compliance programs should require that the promotion of, and adherence to, the elements of the compliance program be a factor in evaluating the performance of all employees. Employees should be periodically trained in new compliance policies and procedures. Policies should require that managers:

- Discuss with all supervised employees and relevant contractors the compliance policies and legal requirements applicable to their function;
- Inform all supervised personnel that strict compliance with these policies and requirements is a condition of employment; and
- Disclose to all supervised personnel that the Medicare+Choice organization will take disciplinary action up to and including termination for violation of these policies or requirements.

In addition to making performance of these duties an element in evaluations, the compliance officer or company management should include a policy that managers and supervisors will be sanctioned for failure to instruct adequately their subordinates or for failure to detect noncompliance with applicable policies and legal requirements, where reasonable diligence on the part of the manager or supervisor should have led to the discovery of any problems or violations.

[71] *See* 42 U.S.C. 1395dd. A separate provision prohibits Medicare+Choice organizations requiring enrollees to obtain prior authorization for emergency services. *See* 42 U.S.C. 1395w–22(d)(1)(E).

[72] OIG and HCFA have issued a proposed Special Advisory Bulletin on this topic. *See* 63 FR. 67486 (12/7/98).

[73] This should include notifications regarding quality of care issues; confusing or inaccurate encounter data; and termination of the contract.

B. Designation of a Compliance Officer and a Compliance Committee

1. Compliance Officer

Every Medicare+Choice organization should designate a compliance officer to serve as the focal point for compliance activities. This responsibility may be the individual's sole duty or added to other management responsibilities, depending upon the size and resources of the Medicare+Choice organization and the complexity of the task.

Designating a compliance officer with the appropriate authority is critical to the success of the program, necessitating the appointment of a high-level official in the Medicare+Choice organization with direct access to the company's governing body, the CEO and all other senior management and legal counsel.[74] While it is important that the compliance officer have appropriate authority, we are not suggesting that the compliance officer should have programmatic responsibility for the various aspects of the Medicare+Choice program. For example, the compliance officer should have full authority to stop the submission of data that he or she believes is problematic until such time as the issue in question has been resolved. In addition, the compliance officer should be copied on the results of all internal audit reports and work closely with key managers to identify aberrant trends in the areas that require certification. The compliance officer must have the authority to review all documents and other information that are relevant to compliance activities, including, but not limited to, beneficiary records (where appropriate) and records concerning the marketing efforts of the facility and the Medicare+Choice organization arrangements with other parties, including employees, professionals on staff, relevant independent contractors, suppliers, agents, supplemental staffing entities and physicians. This policy enables the compliance officer to review contracts and obligations (seeking the advice of legal counsel, where appropriate) that may contain referral and payment provisions that could violate statutory or regulatory requirements.

Coordination and communication are the key functions of the compliance officer with regard to planning, implementing and monitoring the compliance program. With this in mind, the OIG recommends the Medicare+Choice organization's compliance officer closely coordinate compliance functions with providers' compliance officers.

The compliance officer should have sufficient funding and staff to fully perform his or her responsibilities. These duties should include:

- Overseeing and monitoring the implementation of the compliance program;[75]
- Reporting on a regular basis to the Medicare+Choice organization's governing body, CEO and compliance committee on the progress of implementation and assisting these components in establishing methods to improve the Medicare+Choice organization's efficiency and quality of services and to reduce the Medicare+Choice organization's vulnerability to fraud, abuse and waste;
- Periodically revising the program in light of changes in the organization's needs and in the law and policies and procedures of Government and private payor health plans;
- Reviewing employees' certifications stating that they have received, read and understood the standards of conduct;
- Developing, coordinating and participating in a multifaceted educational and training program that focuses on the elements of the compliance program and seeks to ensure that all appropriate employees and management are knowledgeable of, and comply with, pertinent Federal and State standards;
- Coordinating personnel issues with the Medicare+Choice organization's human resources/personnel office (or its equivalent) to ensure that providers and employees do not appear in the List of Excluded Individuals/Entities and the GSA list of debarred contractors;[76]
- Assisting the Medicare+Choice organization's management in coordinating internal compliance review and monitoring activities, including annual or periodic reviews of departments;
- Independently investigating and acting on matters related to compliance, including the flexibility to design and coordinate internal investigations (*e.g.*, responding to reports of problems or suspected violations) and any resulting corrective action with all departments, providers and sub-providers, agents and, if appropriate, independent contractors;
- Developing policies and programs that encourage managers and employees to report suspected fraud and other improprieties without fear of retaliation; and
- Continuing the momentum of the compliance program and the accomplishment of its objectives long after the initial years of implementation.

2. Compliance Committee

The OIG recommends that a compliance committee be established to advise the compliance officer and assist in the implementation of the compliance program.[77] When assembling a team of people to serve as the Medicare+Choice organization's compliance committee, the company should include individuals with a variety of skills.[78] The OIG strongly recommends that the compliance officer manage the compliance committee. Once a managed care organization chooses the people that will accept the responsibilities vested in members of the compliance committee, the organization must train these individuals on the policies and procedures of the compliance program.

The committee's responsibilities should include:

- Analyzing the organization's regulatory environment, the legal requirements with which it must comply and specific risk areas;
- Assessing existing policies and procedures that address these areas for possible incorporation into the compliance program;
- Working with appropriate departments, as well as affiliated providers, to develop standards of

[74] The OIG believes that it is not advisable for the compliance function to be subordinate to the Medicare+Choice organization's general counsel, comptroller or similar company financial officer. Free-standing compliance functions help to ensure independent legal reviews and financial analyses of the institution's compliance activities. By separating the compliance function from the key management positions of general counsel or CFO (where the size and structure of the organization make this a feasible option), a system of checks and balances is established to more effectively achieve the compliance program's goals.

[75] For multi-site Medicare+Choice organizations, the OIG encourages coordination with each facility owned by the Medicare+Choice organization through the use of compliance liaisons at each site.

[76] *See* note 94.

[77] The compliance committee benefits from having the perspectives of individuals with varying responsibilities in the organization, such as operations, finance, audit, human resources, utilization review, medicine, claims processing, information systems, legal, marketing, enrollment and disenrollment as well as employees and managers of key operating units. These individuals should have the requisite seniority and comprehensive experience within their respective departments to implement any necessary changes in the company's policies and procedures.

[78] A Medicare+Choice organization should expect its compliance committee members and compliance officer to demonstrate high integrity, good judgment, assertiveness and an approachable demeanor, while eliciting the respect and trust of employees of the organization. The compliance committee members should also have significant professional experience in working with quality assurance, enrollment, marketing, clinical records and auditing principles.

conduct and policies and procedures that promote allegiance to the organization's compliance program;

- Recommending and monitoring, in conjunction with the relevant departments, the development of internal systems and controls to carry out the organization's standards, policies and procedures as part of its daily operations;
- Determining the appropriate strategy/approach to promote compliance with the program and detection of any potential violations, such as through hotlines and other fraud reporting mechanisms;
- Developing a system to solicit, evaluate and respond to complaints and problems; and
- Monitoring internal and external audits and investigations for the purpose of identifying troublesome issues and deficient areas experienced by the Medicare+Choice organization and implementing corrective and preventive action.

The committee may also address other functions as the compliance concept becomes part of the overall operating structure and daily routine.

C. Conducting Effective Training and Education

The proper education and training of corporate officers, managers, employees and the continual retraining of current personnel at all levels are significant elements of an effective compliance program. Where feasible, the Medicare+Choice organization should afford outside contractors and its provider clients the opportunity to participate in the organization's compliance training and educational programs. The contractors and provider clients should be encouraged to develop their own compliance programs that complement the Medicare+Choice organization's compliance program.

1. Formal Training Programs

In order to ensure the appropriate information is being disseminated to the correct individuals, the Medicare+Choice organization training program should include both a general session and specialized sessions on specific risk areas. All employees should attend the general session on compliance. Employees whose job responsibilities implicate specific risk areas (*e.g.*, marketing or capitated reimbursement rules) should attend the specialized sessions.

The OIG recommends attendance and participation at training programs be made a condition of continued employment and that failure to comply with training requirements should result in disciplinary action, including possible termination, when such failure is serious. The Medicare+Choice organization should retain adequate records of its training of employees, including attendance logs and material distributed at training sessions. New employees should be targeted for training early in their employment, and to the extent that they perform complicated tasks with greater organizational legal exposure, should be monitored closely until all training is completed.

a. General Sessions

As part of their compliance programs, Medicare+Choice organizations should require all affected employees to attend annual training that emphasizes the organization's commitment to compliance with all Federal and State statutes and requirements, and the policies of private payors. This training should highlight the organization's compliance program, summarize fraud and abuse statutes and regulations, Federal and State health care program requirements, documentation requirements for data submission and marketing practices that reflect current legal and program standards.

As part of the initial training, the standards of conduct should be distributed to all employees. Every employee, as well as contracted consultants, should be required to sign and date a statement that reflects the employee's knowledge of, and commitment to the standards of conduct. This attestation should be retained in the employee's personnel file. For contracted consultants, the attestation should become part of the contract and remain in the file that contains such documentation. To ensure that employees continuously meet the expected high standards set forth in the code of conduct, any employee handbook delineating or expanding upon these standards of conduct should be regularly updated as applicable statutes, regulations and Federal health care program requirements are modified.[79] Medicare+Choice organizations should provide an additional attestation in the modified standards that stipulates the employee's knowledge of, and commitment to, the modifications.

[79] While the OIG recognizes that not all standards, policies and procedures need to be communicated to all employees, it believes that the bulk of the standards that relate to complying with fraud and abuse laws and other ethical areas should be addressed and made part of all employees' training.

b. Specialized Training

Because Medicare+Choice organizations are responsible for compliance in all of the risk areas mentioned in section II.A. above, the OIG recommends Medicare+Choice organizations require individuals who are involved in the risk areas to receive specialized training. For example, marketing employees should receive training on the marketing, enrollment, disenrollment and anti-kickback policies. All employees who work with beneficiaries or providers regarding medical services should receive appropriate training on the risks associated with under-utilization. Those employees who are involved in developing enrollment, encounter and ACR data should receive training on HCFA policies in these areas. Clarifying and emphasizing these areas of concern through training and educational programs are particularly relevant to a Medicare+Choice organization's marketing and financial personnel, in that the pressure to meet business goals may render these employees particularly vulnerable to engaging in prohibited practices.

The OIG recommends Medicare+Choice organizations' compliance programs address the need for periodic professional education courses for personnel. Such courses would be in addition to the internal training sessions provided by the organization. For example, the Medicare+Choice organization should ensure that data submission personnel receive annual professional training on the updated policies, requirements and directives for the current year.

c. Format of the Training Program

The OIG suggests all relevant levels of personnel be made part of various educational and training programs of the Medicare+Choice organization. Employees should be required to have a minimum number of educational hours per year, as appropriate, as part of their employment responsibilities. A variety of teaching methods, such as interactive training and training in several different languages (including the translation of standards of conducts and other materials), particularly where a Medicare+Choice organization has a culturally diverse staff, should be implemented so that all affected employees are knowledgeable about the institution's standards of conduct and procedures for alerting senior management to problems and concerns. In addition, the materials should be written at appropriate reading levels for targeted employees. All training

materials should be designed to take into account the skills, knowledge and experience of the individual trainees. Post-training tests can be used to assess the success of training provided and employee comprehension of the billing company's policies and procedures.

2. Informal and Ongoing Compliance Training

It is essential that compliance issues remain at the forefront of the Medicare+Choice organization's priorities. The organization must demonstrate its commitment by continuing to disseminate the compliance message. One effective mechanism to achieve this goal is to publish a monthly compliance newsletter. This would allow the Medicare+Choice organization to address specific examples of problems the company encountered during its ongoing audits and risk analysis, while reinforcing the company's firm commitment to the general principles of compliance and ethical conduct. The newsletter could also include the risk areas identified in current OIG publications or investigations. Finally, the Medicare+Choice organization could use the newsletter as a mechanism to address areas of ambiguity in the marketing, utilization review and data submission process, and to notify employees of significant legal or regulatory developments. The Medicare+Choice organization should maintain its newsletters in a central location to document the guidance offered and provide new employees with access to guidance previously provided. Other written materials, such as posters, fliers or articles in other company publications, could also be used to disseminate the compliance message.

Another effective method of maintaining the presence of the compliance message is to maintain a website devoted to compliance issues. This could be linked to the homepage of the organization. Many organizations have chosen to maintain these sites internally on the Intranet to alleviate any confidentiality concerns. The Intranet (or Internet) also facilitates the use of hypertext links that allow the organization to maintain a centralized source on statutory, regulatory and other program guidance disseminated by HCFA,[80] the OIG, the Department of Justice and the Congress. These links, along with any other webpages that the Medicare+Choice organization deems pertinent and useful can be assembled on a single site that can, by hypertext link, provide access to all of these useful resources.

D. Developing Effective Lines of Communication

An open line of communication between the compliance officer and Medicare+Choice organization personnel, as well as among the organization, health care providers and enrollees, is critical to the successful implementation of a compliance program and the reduction of any potential for fraud, abuse and waste. Each organization should have in place both a mechanism for the reporting of improper conduct, as well a mechanism for more routine types of communication among the compliance officer and relevant groups.

1. Hotline or Other System for Reports of Potential Misconduct

Each Medicare+Choice organization should have in place a hotline or other mechanism[81] through which employees, enrollees or other parties can report potential violations of the organization's compliance policies or of Federal or State health care program requirements. In any event, several independent reporting paths should be created for an employee to report fraud, waste or abuse so that such reports cannot be diverted by supervisors or other personnel. If the organization establishes a hotline, the telephone number should be made readily available to all employees, enrollees and independent contractors, by circulating the number on wallet cards or conspicuously posting the telephone number in common work areas.[82]

Matters reported through the hotline or other communication sources that suggest violations of compliance policies, Federal and State health care program requirements, regulations or statutes should be documented and investigated promptly to determine their veracity. A log should be maintained by the compliance officer that records such calls, including the nature of any investigation and its results.[83] Such information should be included in reports to the governing body, the CEO and compliance committee.

Employees, enrollees and providers should be permitted to report matters on a confidential basis. To encourage such reporting, written confidentiality and non-retaliation policies should be developed and distributed to all employees, enrollees and providers to encourage communication and the reporting of incidents of potential fraud.[84] While the Medicare+Choice organization should always strive to maintain the confidentiality of the reporter's identity, the policies should explicitly communicate that there may be a point where the individual's identity may become known or may have to be revealed.

The OIG recognizes that assertions of fraud and abuse by those who may have participated in illegal conduct or committed other malfeasance raise numerous complex legal and management issues that should be examined on a case-by-case basis. The compliance officer should work closely with legal counsel to obtain guidance on these issues.

2. Routine Communication/Access to the Compliance Officer

While it is crucial that Medicare+Choice organizations have effective systems in place for the reporting of suspected misconduct, it is equally important that the compliance officer foster more routine communication both among its employees and among its health care providers and enrollees.

With respect to its own employees, the OIG encourages the establishment of procedures for personnel to seek clarification from the compliance officer or members of the compliance committee in the event of any confusion or question regarding a company policy, practice or procedure. Questions and responses should be documented and dated and, if appropriate, shared with other staff so that standards, policies, practices and procedures can be updated and improved to reflect any

[80] HCFA's Medicare+Choice webpage is located at http://www.hcfa.gov/medicare/mgdcar1.htm.

[81] The OIG recognizes that it may not be financially feasible for a small Medicare+Choice organization to maintain a telephone hotline dedicated to receiving calls solely on compliance issues. These companies may explore alternative methods, e.g., contracting with an independent source to provide hotline services or establishing a written method of confidential disclosure.

[82] Medicare+Choice organizations should also post in a prominent, available area the HHS-OIG Hotline telephone number, 1–800–447–8477 (1–800–HHS–TIPS), in addition to any organization's hotline number that may be posted.

[83] To efficiently and accurately fulfill such an obligation, the Medicare+Choice organization should create an intake form for all compliance issues identified through reporting mechanisms. The form could include information concerning the date the potential problem was reported, the internal investigative methods utilized, the results of any investigation, any corrective action implemented, any disciplinary measures imposed and any overpayments and monies returned.

[84] The OIG believes that whistleblowers should be protected against retaliation, a concept embodied in the provisions of the False Claims Act. See 31 U.S.C. 3730(h). In many cases, employees sue their employers under the False Claims Act's qui tam provisions out of frustration because of the company's failure to take action when a questionable, fraudulent or abusive situation was brought to the attention of senior corporate officials.

necessary changes or clarifications. The compliance officer may want to solicit employee input in developing these communication and reporting systems. The methods discussed above relating to ongoing training and education are an integral part of this communication.[85]

The communication and coordination function of the compliance program serves an even more critical role in the context of the managed care environment because the managed care entity serves as an intermediary between the health care provider and the enrollee.[86] In fact, the raison d'étre of a managed care organization is to coordinate the care of its enrollees. As with providers, communications with beneficiaries and communications with HCFA (and its designees) must demonstrate the highest level of integrity, honesty and judgment. The Medicare+Choice organization should implement methods to encourage communication among its enrollees and providers. For example, a Medicare+Choice organization should communicate the results of audits, disenrollment surveys, utilization data and quality of care determinations to its contracting suppliers and providers in order to facilitate open discussion regarding appropriate health care delivery.

E. Auditing and Monitoring

An ongoing evaluation process is critical to a successful compliance program. The OIG believes an effective program should incorporate thorough monitoring of its implementation and regular reporting to senior company officers.[87] Compliance reports created by this ongoing monitoring, including reports of suspected noncompliance, should be maintained by the compliance officer and reviewed with the Medicare+Choice organization's senior management and the compliance committee. The extent and frequency of the audit function may vary depending on factors such as the size of the company, the resources available to the company, the company's prior history of noncompliance and the risk factors that are prevalent in a particular organization.

Although many monitoring techniques are available, one effective tool to promote and ensure compliance is the performance of regular, periodic compliance audits by internal or external auditors who have expertise in Federal and State health care statutes, regulations and Federal health care program requirements. The audits should focus on the Medicare+Choice organization's programs or divisions, including external relationships with third-party contractors, specifically those with substantive exposure to Government enforcement actions. The audits should be sure to cover the range of programmatic requirements of the Medicare+Choice program. In particular, the audits should focus on the risk areas identified earlier in this document, especially the data and information which affects payments by Medicare. Finally, the Medicare+Choice organization should focus on any areas of specific concern identified within that organization and those that may have been identified by any outside agency, whether Federal or State.

Monitoring techniques may include sampling protocols that permit the compliance officer to identify and review variations from an established baseline.[88] Significant variations from the baseline should trigger a reasonable inquiry to determine the cause of the deviation. If the inquiry determines that the deviation occurred for legitimate, explainable reasons, the compliance officer or manager may want to limit any corrective action or take no action. If it is determined that the deviation was caused by improper procedures, misunderstanding of rules, including fraud and systemic problems, the Medicare+Choice organization should take prompt steps to correct the problem.[89] Any overpayments discovered as a result of such deviations should be reported promptly to HCFA (or its designees), with appropriate documentation and a thorough explanation of the reason for the overpayment.[90]

An effective compliance program should also incorporate periodic (at a minimum, annual) reviews of whether the program's compliance elements have been satisfied, *e.g.*, whether there has been appropriate dissemination of the program's standards, training, ongoing educational programs and disciplinary actions.[91] This process will verify actual conformance by all departments with the compliance program. Such reviews may support a determination that appropriate records have been created and maintained to document the implementation of an effective program.

The reviewers involved in any audits should:

- Possess the qualifications and experience necessary to adequately identify potential issues with the subject matter to be reviewed;
- Be independent of line management;
- Have access to existing audit and health care resources, relevant personnel and all relevant areas of operation;
- Resent written evaluative reports on compliance activities to the CEO, governing body members of the compliance committee and its provider clients on a regular basis, but not less than annually; and
- Specifically identify areas where corrective actions are needed.

In the Medicare+Choice context, a variety of different methods will be necessary to adequately monitor and evaluate the ongoing operations of the Medicare+Choice organization. In general, OIG recommends the use of techniques such as on-site visits, questionnaires (for providers, enrollees and employees), and trend analyses, to name just several.[92] Because the

[85] In addition to methods of communication used by current employees, an effective employee exit interview program could be designed to solicit information from departing employees regarding potential misconduct and suspected violations of the Medicare+Choice organization's policy and procedures.

[86] An ''enrollee'' is defined in this compliance program guidance as any Medicare+Choice eligible individual who has elected a Medicare+Choice plan offered by a Medicare+Choice organizations. See 42 CFR 422.2.

[87] Even when a facility is owned by a larger corporate entity, the regular auditing and monitoring of the compliance activities of an individual facility must be a key feature in any annual review. Appropriate reports on audit findings should be periodically provided and explained to a parent-organization's senior staff and officers.

[88] The OIG recommends that when a compliance program is established in a Medicare+Choice organization, the compliance officer, with the assistance of department managers, take a ''snapshot'' of the organization's operations from a compliance perspective. This assessment can be undertaken by outside consultants, law or accounting firms, or internal staff, with authoritative knowledge of health care compliance requirements. This ''snapshot,'' often used as part of bench marking analysis, becomes a baseline for the compliance officer and other managers to judge the Medicare+Choice organization's progress in reducing or eliminating potential areas of vulnerability. Medicare+Choice organizations should track statistical data on utilization review and quality data based on customer satisfaction and renewal data. This will facilitate identification of problem areas and elimination of potential areas of abusive or fraudulent conduct.

[89] Prompt steps to correct the problem include contacting the appropriate provider in situations where the provider's actions contributed to the problem.

[90] In addition, when appropriate, as referenced in section G.2, below, reports of fraud or systemic problems should also be made to the appropriate governmental authority.

[91] One way to assess the knowledge, awareness and perceptions of the Medicare+Choice organization's staff is through the use of a validated survey instrument (*e.g.*, employee questionnaires, interviews or focus groups).

[92] Medicare+Choice organizations may want to consult HCFA's Contractor Performance Monitoring System Manual to get additional ideas for monitoring methods. In addition, organizations may

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auditing and monitoring function is very different and much more complex in the managed care context than in any other segment of the health care industry, we have provided additional guidance on the methods to be used in evaluating selected risk areas.

1. Marketing/Enrollment/Disenrollment

Developing a system for evaluating the compliance of the marketing, enrollment and disenrollment functions of a Medicare+Choice organization requires innovative techniques. Each Medicare+Choice organization will have to develop an individualized method as to how to obtain this data. Some of the methods that the OIG suggests include: the use of secret shoppers; surveying current enrollees;[93] and conducting exit interviews with former enrollees (particularly those that disenrolled just prior to obtaining an expensive service) on their experience with the Medicare+Choice marketing and enrollment process. Once this data is collected, it must be maintained in a format that can be accessed readily.

In an effort to integrate the monitoring function with its training function, Medicare+Choice organizations may wish to test their marketing staff on their knowledge of the company's policies and procedures, as well as the Federal and State statutes that govern the marketing process. This assessment can be developed to take on many formats. Many companies have customized interactive software to test employees' knowledge of relevant policies and procedures. It may also be formulated in the traditional written version.

Methods used to monitor marketing agents include the analysis of disenrollment data to identify marketing agents with high and low percentages of member disenrollments within a set number of days (*e.g.*, 90 days). In addition, Medicare+Choice organizations may want to establish enrollment verification systems requiring that a different individual from the sales agent meet with beneficiaries who have applied for enrollment to ensure that they understand restrictions of the plan, such as the lock-in provision.

Finally, it is essential for all marketing materials to be reviewed by the general counsel's office to ensure that they do not mislead, confuse or misrepresent any aspect of the plan. Similarly, they should also be examined by the claims processing department and utilization review office for consistency with the policies, procedures and practices of these departments.

2. Underutilization and Quality of Care

Procedures for tracking and reporting utilization review data are vital to the success of any compliance endeavor. Medicare+Choice organizations should periodically review the service areas that are part of the Medicare+Choice organization to ensure that enrollees are receiving adequate access to care. In reviewing service areas, Medicare+Choice organizations should collect data on the number of primary care physicians in the service area, the number and type of specialists in the service area, the waiting time for appointments, the telephone access to the Medicare+Choice organization and the problems associated with the coordination of care. All of this data should be maintained in a database in a format that can be used to generate statistical data and analysis.

Medicare+Choice organizations should ensure that there are adequate systems in place to monitor underutilization and inappropriate denials. Such procedures include collecting data on utilization patterns and detecting aberrant patterns. This data should be checked against utilization rates in the industry. This function could be performed by a medical affairs department that is responsible for regular review of claims, the payment system, encounter data and medical record review to assess the degree to which care is under (or over) utilized.

Similarly, the Medicare+Choice organization should survey its enrollees on utilization patterns and whether they felt they were subjected to inadequate health care services or inappropriate denials. Such survey results should be reviewed and investigated, when appropriate. Generally, these may be skewed in favor of the Medicare+Choice organization if the enrollees are current members. Presumably, if an enrollee was truly dissatisfied with the Medicare+Choice organization's attitude toward enrollee rights, the enrollee would have disenrolled from the plan. As a result, a Medicare+Choice organization should evaluate both current enrollee satisfaction surveys and exit interview surveys of former enrollees.

Medicare+Choice organizations have a good source of information regarding utilization issues, simply by tracking the type of appeals and grievances they receive from beneficiaries. This information should be tracked in a database that can be easily accessed by type of grievance or appeal and results.

3. Data Collection and Submission Processes

Given the importance of the enrollment, encounter and ACR data, the Medicare+Choice organization should develop ways to audit this information to assure its accuracy. For example, encounter data should be sampled periodically to determine its accuracy and reliability. As a part of that process, Medicare+Choice organizations must detail in their contractual relationships with providers the access that they will need to the provider's medical record documentation.

4. Anti-Kickback and Other Inducements

Medicare+Choice organizations should periodically review their contractual documents and discussions with providers to ensure that ''swapping'' is not occurring, which would cause such relationships to fall outside the applicable safe harbor. In addition, contracts with marketing personnel should be reviewed by legal counsel to be sure they do not violate applicable statutes and regulations.

F. Enforcing Standards Through Well-Publicized Disciplinary Guidelines and Policies Regarding Dealings With Ineligible Persons

The OIG recommends that all Medicare +Choice organizations' compliance programs include several key policies in the area of personnel/human resources. The first deals with the establishment and consistent application of appropriate disciplinary policies to deal with improper conduct and the second deals with the employment of certain ineligible individuals.

1. Consistent Enforcement of Disciplinary Policies

An effective compliance program should include guidance regarding disciplinary action for all employees who have failed to comply with the Medicare+Choice organization's standards of conduct, policies and procedures, Federal health care program requirements, or Federal and State laws, or those who have otherwise engaged in wrongdoing. It is vital to publish and disseminate the range of possible disciplinary actions for improper

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want to consult the OAS website for information on conducting audits, including information on statistical sampling (RAT–STATS). *See* note 10.

[93] It should be noted, while this method may be less expensive, it may not provide unbiased data, particularly in the area of selective marketing. In fact, in the selective marketing area, the data may be skewed significantly in favor of the Medicare+Choice organization.

conduct and to educate officers and other staff regarding these standards. Employees should be advised that disciplinary action may be appropriate where a responsible employee's failure to detect a violation is attributable to his or her negligence or reckless conduct. The sanctions could range from oral warnings to suspension, termination or other sanctions, as appropriate. While each situation must be considered on a case-by-case basis to determine the appropriate sanction, intentional or reckless noncompliance should subject transgressors to significant sanctions.

The written standards of conduct should elaborate on the procedures for handling disciplinary problems and identify who will be responsible for taking appropriate action. For example, while disciplinary actions can be handled by department managers, others may have to be resolved by a more senior official of the organization. Personnel should be advised by the organization that disciplinary action will be taken on a fair and equitable basis, that is, all levels of employees should be subject to similar disciplinary action for the commission of similar offenses. Managers and supervisors should be held accountable to implement the disciplinary policy consistently so that the policy will have the required deterrent effect.

2. Employment of and Contracting With Ineligible Persons

All Medicare+Choice organizations should use care when delegating substantial discretionary authority to make decisions that may involve compliance with the law or compliance oversight. In particular, the organization should ensure that it does not delegate such responsibilities to individuals or entities that it knows, or should have known, have a propensity to engage in inappropriate or improper conduct. Pursuant to the compliance program, Medicare+Choice organization's policies should prohibit the employment of or contracting with individuals or entities who have been recently convicted of a criminal offense related to health care or who are listed as debarred, excluded or otherwise ineligible for participation in Federal health care programs. The policies should require the Medicare+Choice organization to utilize Government resources to determine whether such individuals or entities are debarred or excluded. These resources should be used for both potential employees (as part of the employment application process, which should also include a reasonable and prudent background investigation), and should be used to periodically check existing employees and contractors.

Lists of debarred and excluded individuals and entities are currently maintained by both the OIG and the General Services Administration.[94] By approximately January 2000, the Healthcare Integrity Protection Data Bank (HIPDB) will be available to Medicare+Choice organizations (for a nominal fee) to use in conducting these checks on employees and contractors.[95] The HIPDB is an electronic data collection program that will collect, store and disseminate reports on practitioners, providers and suppliers that have been the subject of health care related final adverse actions in criminal, civil and administrative proceedings. The final adverse actions to be reported to the HIPDB include criminal convictions or civil judgments related to the delivery of health care, actions by Federal or State agencies responsible for licensing or certification of health care providers, suppliers and practitioners, and exclusions from Federal or State health care programs.

Pending the resolution of any known criminal charges or proposed debarment or exclusion, the OIG recommends that such individuals should be removed from direct responsibility for, or involvement in, any Federal health care program.[96] Similarly, with regard to current employees or independent contractors, if resolution of the matter results in conviction, debarment or exclusion, then the Medicare+Choice organization should remove the individual from direct responsibility for, or involvement with, the organization's business operations related to Federal health care programs. In addition, they should remove such person from any position for which the person's salary or other items or services rendered, ordered, or prescribed by the person are paid in whole or part, directly or indirectly, by Federal health care programs or otherwise with Federal funds, at least until such time as the person is reinstated into participation in the Federal health care programs.

G. Responding to Detected Offenses and Developing Corrective Action Initiatives

Violations of the Medicare+Choice organization's compliance program, failures to comply with applicable Federal or State law, rules and program instructions and other types of misconduct threaten a Medicare+Choice organization's status as a reliable, honest and trustworthy company. Detected but uncorrected misconduct can seriously endanger the mission, reputation and legal status of the organization. Consequently, upon reports or reasonable indications of suspected noncompliance, it is important that the chief compliance officer or other management officials promptly investigate the conduct in question to determine whether a material violation of applicable law, rule or program instruction or the requirements of the compliance program has occurred, and if so, take steps to correct the problem.[97] As appropriate, such steps may include an immediate referral to criminal and/or civil law enforcement authorities, a corrective action plan, a report to the Government,[98] and the notification to the provider of any discrepancies or overpayments, if applicable.

The Medicare+Choice organization should document its efforts to comply with applicable statutes, regulations and Federal health care program requirements. For example, where a Medicare+Choice organization, in its efforts to comply with a particular statute, regulation or program requirement, requests advice from a Government agency charged with administering a Federal health care program, the Medicare+Choice organization should document and retain a record of the request and any written or oral response. This step is extremely important if the Medicare+Choice organization intends to rely on that response to guide it in future decisions, actions or appeals. A log of oral inquiries between the Medicare+Choice organization and third parties will help the organization document its attempts at compliance. In

[94] OIG's List of Excluded Individuals/Entities is available on the Internet at http://www.dhhs.gov/progorg/oig and the General Services Administration list of debarred contractors is available on the Internet at http://www.arnet.gov/epls.

[95] See 42 U.S.C. 1320a–7e.

[96] Prospective employees who have been officially reinstated into the Medicare and Medicaid programs by the OIG may be considered for employment upon proof of such reinstatement.

[97] Instances of non-compliance must be determined on a case-by-case basis. The existence, or amount, of a *monetary* loss to a health care program is not solely determinative of whether or not the conduct should be investigated and reported to governmental authorities. In fact, there may be instances where there is no readily identifiable monetary loss at all, but corrective action and reporting are still necessary to protect the integrity of the applicable program and its beneficiaries.

[98] The OIG currently maintains a provider self-disclosure protocol that encourages providers to report suspected fraud. The concept of self-disclosure is premised on a recognition that the Government alone cannot protect the integrity of the Medicare and other Federal health care programs. Health care providers must be willing to police themselves, correct underlying problems and work with the Government to resolve these matters. The self-disclosure protocol can be located on the OIG's website at http://www.dhhs.gov/progorg/oig.

addition, the Medicare+Choice organization should maintain records relevant to the issue of whether its reliance was ''reasonable,'' and whether it exercised due diligence in developing procedures to implement the advice.

1. Violations and Investigations

Depending upon the nature of the alleged violations, an internal investigation will probably include interviews and a review of relevant documents. Medicare+Choice organizations should consider engaging outside counsel, auditors or health care experts to assist in an investigation. Records of the investigation should contain documentation of the alleged violation, a description of the investigative process (including the objectivity of the investigators and methodologies utilized), copies of interview notes and key documents, a log of the witnesses interviewed and the documents reviewed, the results of the investigation, e.g., any disciplinary action taken and any corrective action implemented. Although any action taken as the result of an investigation will necessarily vary depending upon the Medicare+Choice organization and the situation, Medicare+Choice organizations should strive for some consistency by utilizing sound practices and disciplinary protocols. Further, after a reasonable period, the compliance officer should review the circumstances that formed the basis for the investigation to determine whether similar problems have been uncovered or modifications of the compliance program are necessary to prevent and detect other inappropriate conduct or violations.

If an investigation of an alleged violation is undertaken and the compliance officer believes the integrity of the investigation may be at stake because of the presence of employees under investigation, those subjects should be removed from their current work activity until the investigation is completed (unless an internal or Government-led undercover operation known to the Medicare+Choice organization is in effect). In addition, the compliance officer should take appropriate steps to secure or prevent the destruction of documents or other evidence relevant to the investigation. If the Medicare+Choice organization determines disciplinary action is warranted, it should be prompt and imposed in accordance with the organization's written standards of disciplinary action.

2. Reporting

If the compliance officer, compliance committee or a management official discovers credible evidence of misconduct from any source and, after reasonable inquiry, has reason to believe that the misconduct may violate criminal, civil or administrative law,[99] then the Medicare+Choice organization should report the existence of misconduct promptly to the appropriate Government authority [100] within a reasonable period, but not more than 60 days after determining that there is credible evidence of a violation. Prompt reporting will demonstrate the Medicare+Choice organization's good faith and willingness to work with governmental authorities to correct and remedy the problem. In addition, reporting such conduct will be considered a mitigating factor by the OIG in determining administrative sanctions (e.g., penalties, assessments and exclusion), if the reporting company becomes the target of an OIG investigation.[101]

3. Reporting Procedure

When reporting misconduct to the Government, a Medicare+Choice organization should provide all evidence relevant to the alleged violation of applicable Federal or State law(s) and any potential cost impact. The compliance officer, with guidance from the governmental authorities, could be requested to continue to investigate the reported violation. Once the investigation is completed, the compliance officer should be required to notify the appropriate governmental authority of the outcome of the investigation, including a description of the impact of the alleged violation on the operation of the applicable health care programs or their beneficiaries. If the investigation ultimately reveals criminal, civil or administrative violations have occurred, the appropriate Federal and State officials [102] should be notified immediately.

4. Corrective Actions

As previously stated, Medicare+Choice organizations should take appropriate corrective action, including prompt identification of any overpayment, repayment of the overpayment, modification to policies or manuals and the imposition of proper disciplinary action, if applicable. Failure to notify authorities of an overpayment within a reasonable period of time could be interpreted as an intentional attempt to conceal the overpayment from the Government, thereby establishing an independent basis for a criminal violation with respect to the Medicare+Choice organization, as well as any individuals who may have been involved.[103] For this reason, Medicare+Choice compliance programs should ensure that overpayments are identified quickly and promptly return overpayments obtained from Medicare or other Federal health care programs.[104]

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[99] When making the determination of credible misconduct, the Medicare+Choice organization should consider, among other statutes, 18 U.S.C. 669 [holding an individual(s) criminally liable for knowingly and willfully embezzling, stealing or otherwise converting to the use of any person other than the rightful owner or intentionally misapplying any of the monies, funds * * * premiums, credits, property or assets of a health care benefit program] and 18 U.S.C. 2 [establishing criminal liability for an individual(s) who commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission as punishable as the principle]. In making this determination, the Medicare+Choice organization should also consider the civil False Claims Act, 31 U.S.C. 3729, which imposes treble damages and penalties on those (including subcontractors) who knowingly submit false claims for Federal funds, or cause their submission, or who knowingly prepare false records or statements to get such false claims paid. Under the civil False Claims Act, ''knowingly'' means that a person ''has actual knowledge of the information, acts in deliberate ignorance of the truth or falsity of the information, or acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.'' 31 U.S.C. 3729.

[100] Appropriate Federal and/or State authorities include the Office of Inspector General of the Department of Health and Human Services, the Criminal and Civil Divisions of the Department of Justice, the U.S. Attorneys in the relevant districts, and the other investigative arms for agencies administering the affected Federal or State health care programs, such as the State Medicaid Fraud Control Unit, the Defense Criminal Investigative Service, the Department of Veterans Affairs, the Office of Inspector General, U.S. Department of Labor (which has primary criminal jurisdiction over FECA, Black Lung and Longshore programs) and the Office of Inspector General, U.S. Office of Personnel Management (which has primary jurisdiction over the Federal Employees Health Benefit Program).

[101] The OIG has published criteria setting forth those factors that the OIG takes into consideration in determining whether it is appropriate to exclude a health care provider from program participation pursuant to 42 U.S.C. 1320a–7(b)(7) for violations of various fraud and abuse laws. See 62 FR 67392 (12/24/97).

[102] *See* note 100.

[103] *See* 42 U.S.C. 1320a–7b(a)(3).

[104] If a Medicare+Choice organization needs further guidance regarding normal repayment channels, the organization should consult with the CHPP. The CHPP may require certain information (*e.g.*, alleged violation or issue causing overpayment, description of overpayment, description of the internal investigative process with methodologies used to determine any overpayments, disciplinary actions taken and corrective actions taken) to be submitted with return of any overpayments, and that such repayment information be submitted to a specific department or individual in the carrier or intermediary's organization. Interest will be assessed, when appropriate. See 42 CFR 405.376.

*III. Conclusion*

Through this document, the OIG has attempted to provide a foundation for the development of effective and comprehensive Medicare+Choice compliance programs. These principles can also be used by entities to develop compliance programs applicable to other Federal and health care programs, as well as for their private lines of business. As previously stated, however, each program must be tailored to fit the needs and resources of an individual organization, depending upon its particular corporate structure, mission and employee composition. The statutes, regulations and guidelines of the Federal and State health insurance programs, as well as the policies and procedures of the private health plans, should be integrated into every Medicare+Choice organization's compliance program.

The OIG recognizes that the health care industry, which reaches millions of beneficiaries and expends about a trillion dollars annually, is constantly evolving. In no area of the industry is this more evident than in the growing area of managed care, particularly Medicare managed care. As a result, the time is right for Medicare+Choice organizations to implement strong, voluntary compliance programs. Compliance is a dynamic process that helps to ensure Medicare+Choice organizations are better able to fulfill their commitment to ethical behavior and to meet the changes and challenges being imposed upon them by the Congress and private insurers. It is OIG's hope that voluntarily created compliance programs will enable Medicare+Choice organizations to meet their goals of providing efficient and quality health care and at the same time, substantially reduce fraud, waste and abuse.

Dated: June 18, 1999.

**June Gibbs Brown,**

*Inspector General.*

[FR Doc. 99–16072 Filed 6–23–99; 8:45 am]

**BILLING CODE 4150–04–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel, Spore in Ovarian Cancer

*Date:* June 27–29, 1999.

*Time:* 6:00 pm to 6:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

*Contact Person:* Martin H. Goldrosen, PhD., Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, Room 635 C, Rockville, MD 20852–7408, (301) 496–7930.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 18, 1999.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 99–16062 Filed 6–23–99; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

*Date:* July 13–14, 1999.

*Time:* 7:00 pm to 6:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Shan S. Wong, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6 AS 25, National Institutes of Health, Bethesda, MD, (301) 594–7797.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 16, 1999.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 99–16058 Filed 6–23–99; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Dental and Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., a amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Dental Research Special Emphasis Panel 99–37, Review of R01.

*Date:* June 24, 1999.

*Time:* 11:00 am to 12:30 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Philip Washko, PhD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Dental Research Special Emphasis Panel 99–54, Review of P01—Applicant Interview.

*Date:* July 9, 1999.

*Time:* 2:00 pm to 3:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Yong A. Shin, PhD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

*Name of Committee:* National Institute of Dental Research Special Emphasis Panel 99–37, Review of R01.

*Date:* July 22–23, 1999.

*Time:* 8:30 am to 5:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Yasaman Shirazi, PhD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Dental and Craniofacial Res., Bethesda, MD 20892, (301) 594–2372.

*Name of Committee:* National Institute of Dental Research Special Emphasis Panel 99–37, Review of R01.

*Date:* June 22, 1999.

*Time:* 2:00 pm to 3:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Philip Washko, PhD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

*Name of Committee:* National Institute of Dental Research Special Emphasis Panel 99–65, P01, Applicant Interview.

*Date:* July 25–26, 1999.

*Time:* 8:30 am to 5:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Philip Washko, PhD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

*Name of Committee:* National Institute of Dental Research Special Emphasis Panel 99–67, P01, Applicant Interview.

*Date:* August 10–11, 1999.

*Time:* 8:30 am to 5:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Yasaman Shirazi, PhD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Dental and Craniofacial Res., Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: June 16, 1999.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 99–16059 Filed 6–23–99; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

*Date:* July 14–15, 1999.

*Time:* 8:30 am to 5:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Ramada, 8400 Wisconsin Ave, Bethesda, MD 20814.

*Contact Person:* Aftab A. Ansari, PhD, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4952.

*Name of Committee:* National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

*Date:* July 26, 1999.

*Time:* 8:30 am to 5:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

*Contact Person:* Aftab A. Ansari, PhD, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: June 17, 1999.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 99–16061 Filed 6–23–99; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel, ''INFOFAX and Miscellaneous Communications Materials.''

*Date:* July 27, 1999.

*Time:* 9:00 am to 5:00 pm.

*Agenda:* To review and evaluate contract proposals.

*Place:* Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Lyle Furr, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel, ''Science Education Materials for Second and Third Grade Students, Teachers and Parents.''

*Date:* August 11, 1999.

*Time:* 9:00 am to 5:00 pm.

*Agenda:* To review and evaluate contract proposals.

*Place:* Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Lyle Furr, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist

Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: June 18, 1999.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy, NIH.*

[FR Doc. 99–16063 Filed 6–23–99; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel, Behavioral Therapy Development and Behavioral Science.

*Date:* July 9, 1999.

*Time:* 9:00 am to 5:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

*Contact Person:* Kesinee Nimit, MD, Health Scientist Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1432.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel, Bringing Drug Abuse Treatment From Research to Practice.

*Date:* July 15, 1999.

*Time:* 9:00 am to 5:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Kesinee Nimit, MD, Health Scientist Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1432.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: June 18, 1999.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy, NIH.*

[FR Doc 99–16064 Filed 6–23–99; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel IFCN5–01.

*Date:* June 22–23, 1999.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

*Contact Person:* John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* June 28, 1999.

*Time:* 1:00 p.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel ZRG1–RPHB–2(1).

*Date:* June 29–30, 1999.

*Time:* 8:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

*Contact Person:* Michael Micklin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3154, MSC 7848, Bethesda, MD 20892, (301) 435–0682.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel ZRG–1 AARR–4(01).

*Date:* June 29, 1999.

*Time*: 8:30 a.m. to 5:00 p.m.

*Agenda*: To review and evaluate grant applications.

*Place*: Holiday Inn, 2 Montgomery Village Avenue, Gaithersburg, MD 20879.

*Contact Person*: Mohindar Poonian, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, 301–435–1168, poonianm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee*: Center for Scientific Review Special Emphasis Panel. ZRG1 AARR–1 (01).

*Date*: June 29–30, 1999.

*Time*: 8:30 a.m. to 11:00 a.m.

*Agenda*: To review and evaluate grant applications.

*Place*: Wyndham Bristol Hotel, 2430 Pennsylvania Ave, NW, Washington, DC 20037.

*Contact Person*: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee*: Center for Scientific Review Special Emphasis Panel.

*Date*: June 29, 1999.

*Time*: 10:00 a.m. to 11:30 a.m.

*Agenda*: To review and evaluate grant applications.

*Place*: NIH, Rockledge II, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person*: William C. Branche, Phd., Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee*: Center for Scientific Review Special Emphasis Panel.

*Date*: June 29, 1999.

*Time*: 1:00 p.m. to 5:00 p.m.

*Agenda*: To review and evaluate grant applications.

*Place*: Washington Monarch Hotel, 2401 M Street, NW, Washington, DC 20037.

*Contact Person*: Mushtaq A. Khan, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7818, Bethesda, MD 20892, (301) 435–1778, khanm@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee*: Center for Scientific Review Special Emphasis Panel.

*Date*: June 29, 1999.

*Time:* 1:00 pm to 3:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Ron Manning, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, (301) 435–1723.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel

*Date:* June 29, 1999.

*Time:* 1:00 pm to 3:00 pm.

*Agenda:* To provide concept review of proposed grant applications.

*Place:* NIH Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Anita Corman Weinblatt, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7778, Bethesda, MD 20892, (301) 435–1124.

This notice is being published less than 15 days prior to meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Cardiovascular Sciences Initial Review Group. Hematology Subcommittee 2.

*Date:* June 30–July 1, 1999.

*Time:* 8:30 am to 5:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Jerrold Fried, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, (301) 435–1777.

This notice is being published less than 15 days prior to meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* June 30, 1999.

*Time:* 10:00 am to 11:00 am.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Betty Hayden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, (301) 435–1223, haydenb@csr.nih.gov.

This notice is being published less than 15 days prior to meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, AARR–1(02).

*Date:* June 30, 1999.

*Time:* 11:15 am to 5:00 pm.

*Agenda:* To review and evaluate contract proposals.

*Place:* Wyndham Bristol Hotel, 2430 Pennsylvania Ave, NW, Washington, DC 20037.

*Contact Person:* Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* June 30, 1999.

*Time:* 3:00 pm to 4:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Sherry L. Dupere, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7840, Bethesda, MD 20892, (301) 435–1021.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1–HEM–1 (01M).

*Date:* June 30, 1999.

*Time:* 4:00 pm to 6:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7840, Bethesda, MD 20892, (301) 435–1195.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

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Dated: June 17, 1999.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Estimation Methodology for Adults With Serious Mental Illness (SMI)

**AGENCY:** Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Final notice.

**SUMMARY:** This notice establishes a final methodology for identifying and estimating the number of adults with serious mental illness (SMI) within each State. This notice is being served as part of the requirement of Public Law 102–321, the ADAMHA Reorganization Act of 1992.

**EFFECTIVE DATE:** October 1, 1999.

**FOR FURTHER INFORMATION CONTACT:** Ronald W. Manderscheid, Ph.D., Chief, Survey and Analysis Branch, Center for Mental Health Services, Parklawn Building, Rm 15C–04, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3343 (voice), (301) 443–7926 (fax), rmanders@samhsa.gov (e-mail).

### Scope of Application

All individuals whose services are funded through the Federal Community Mental Health Services Block Grant must fall within the definition announced on May 20, 1993, in the **Federal Register**, Volume 58, No. 96, p. 29422. Inclusion or exclusion from the estimates is not intended to confer or deny eligibility for any other service or benefit at the Federal, State, or local level. Additionally, the estimates are not intended to restrict the flexibility or responsibility of State or local governments to tailor publicly-funded systems to meet local needs and priorities. Any ancillary use of these estimates for purposes other than those

identified in the legislation is outside the purview and control of CMHS.

**Background**

Pub. L. 102–321, the ADAMHA Reorganization Act of 1992, amended the Public Health Service Act and created the Substance Abuse and Mental Health Services Administration (SAMHSA). The Center for Mental Health Services (CMHS) was established within SAMHSA to coordinate Federal efforts in the prevention, treatment, and the promotion of mental health. Title II of Pub. L. 102–321 establishes a Block Grant for Community Mental Health Services administered by CMHS, which permits the allocation of funds to States for the provision of community mental health services to children with a serious emotional disturbance (SED) and adults with a serious mental illness (SMI). Pub. L. 102–321 stipulates that States will estimate the incidence (number of new cases in a year) and prevalence (total number of cases in a year) in their applications for Block Grant funds. As part of the process of implementing this new Block Grant, definitions of the terms ''children with a serious emotional disturbance and ''adults with a serious mental illness'' were announced on May 20, 1993, in the **Federal Register**, Volume 58, No. 96, p. 29422. Subsequent to this notice, a group of technical experts was convened by CMHS to develop an estimation methodology to ''operationalize the key concepts'' in the definition of adults with SMI. A similar group has prepared an estimation methodology for children and adolescents with SED. The final SED estimation methodology was published on July 17, 1998, in the **Federal Register**, Volume 63, No. 137, p. 38661.

**Summary of Comments**

This final notice reflects a thorough review and analysis of comments received in response to an earlier draft notice published in the **Federal Register**, on March 28, 1997, Volume 62, No. 60, p. 14928.

CMHS received only nine comments expressing opinions about the proposed methodology. Several questions were raised. These questions are summarized in four broad areas: Operational definition of SMI, complexity of the methodology, differences among States, and other related comments.

*Operational Definition of SMI*

Some comments suggested that the SMI definition was too broad.

The final definition of SMI was published on May 20, 1993, in the **Federal Register**, Volume 58, No 96, p. 29422. This definition cannot be changed by the methodology outlined below.

SMI was defined as the conjunction of a DSM mental disorder and serious role impairment. The Diagnostic Interview Schedule (DIS) estimates were not enhanced. A respondent had to have a DIS/Composite International Diagnostic Interview (CIDI) diagnosis *and* an impairment to qualify for the operational definition of SMI. This means that the estimated annual prevalence of SMI is always equal to or less than the DIS/CIDI estimates of disorder prevalence. The charge to the technical committee was to make what it considered to be the best decisions based on available data about impairment to operationalize the definition of SMI. The report of the committee describes in great detail how and why the technical experts chose specific indicators.

It is important to note that Pub. L. 102–321 explicitly states that SMI includes impairments in functioning. As a result, the technical experts were required to include one component of the operational definition that assesses functioning in social networks. Strict criteria were used, such as reports of extreme deficits in social functioning to qualify for this type of impairment. A respondent must either have one of the following two profiles: (i) Complete social isolation, defined as having absolutely no social contact of any type—telephone, mail, or in-person—with any family member or friend and having no one in his or her personal life with whom he/she has a confiding personal relationship; or (ii) extreme dysfunction in personal relationships, defined as high conflict and no positive interactions and no possibility of intimacy or confiding with any family member or friend. These persons comprise about 10% of those classified as having SMI. The remaining 90% either have a severe disorder like schizophrenia or bipolar disorder, or a disorder and work impairment, or a disorder and report being suicidal.

The rationale for the 57% prevalence estimate of SMI among prison inmates is well documented in the committee's report. A review of epidemiological studies in inmate populations found that the average estimated prevalence of any DIS disorder is 57%. The technical experts concluded that all inmates with one of these disorders, by definition, were functioning inadequately in social roles by virtue of the fact that they were incarcerated.

This definition was adopted for very practical reasons. It is important to remember that the inmate population represents less than one percent of the adult population, and the prevalence estimate of 57% is based on published work.

Some comments urged that the definition of SMI did not constitute the service population for public mental health services.

This final notice includes a statement about the scope of application of the estimates. That statement defines what is and is not intended by the definition and the methodology.

*Complexity of the Methodology*

Some comments noted that the use of the Baltimore sample as a basis for estimating national SMI rates among elderly persons may have introduced errors into the estimates for persons 55 years and older.

The technical experts were mandated to arrive at the best estimate based on currently available data. The Baltimore ECA data were the best currently available for persons 55 years and older. Nationally representative data would have been used if such existed. It will be important in the future to improve the data available to produce estimates for all age groups.

Some comments were made about distortions in State estimates and lack of theory.

The technical experts used all available data on State-level variables that could be obtained readily from the Federal government on an annual basis and explored the effects of these variables in predicting SMI. Such variables were deliberately selected to increase the ease of application of the estimation methodology by the States in the future. The experts believed and continue to believe that they could do no less than exhaustively consider the full range of potentially important predictors of SMI, irrespective of available theory. The analytical iterations are explained in the committee's report. These explanations provide all the detail a specialist in applied statistics or demography would need to evaluate the procedures adopted. These procedures are consistent with currently accepted methods for making small area estimates. Government agencies currently use similar methodologies to make estimates of other State-level social policy variables.

Some comments suggested that confidence intervals were not provided for State prevalence estimates.

Confidence intervals have been provided in this final notice, since estimates are based upon samples rather than a complete enumeration.

Some comments suggested that the estimation methodology paper was difficult to understand and that complex statistical procedures were inadequately explained, with insufficient rationale.

In writing the paper, the authors were sensitive to the importance of being clear about major decisions. The authors have had a great deal of experience writing reports of empirical studies for critical scientific and peer review. By the standards of this scientific review process, the level of documentation presented in the estimation methodology report is quite high.

Some comments indicated that no adjustment was made in the methodology to address the phenomenon of different levels of reporting of psychiatric symptoms by ethnic groups.

The technical experts included information to discriminate nonhispanic whites from all other racial groups in the model. No fine-grained distinctions were made about race/ethnicity because of the small numbers of people in specific race/ethnicity subsamples in the surveys that were analyzed. As part of the analysis, the technical experts obtained all the information that was readily available from the Census Bureau on Census Tract-level, County-level, and State-level demographic variables. All these variables were included in efforts to predict and estimate the prevalence of SMI.

Some comments suggested that the factor analysis was inadequate and that important issues not described (e.g., the number of variables in the analysis or how missing data were handled) could have affected the results.

The factor analysis was carried out on a Census data file containing County-level data from the 1990 Census. The sample size was the number of Counties in the U.S., while the number of variables was over 100 Census characteristics. Some of the characteristics were quite highly correlated across Counties, like median household income and mean household income, or the number of men in a County and the number of women in a County. Factor analysis was used as a way of reducing redundancy prior to performing further analyses. The factor analytic procedures employed represent the state-of-the-art for similar data reduction procedures.

Some comments were made about the use of varimax rather than oblique rotation, the decision to examine only the first ten factors in the solution, and the use of factor-weighted scores.

The group of technical experts explored both oblique and rigid rotations and also looked at the unique factors after the first ten. ''Unique factors'' refer to factors in which there is only a single variable with a high loading. Variance was noted to be trivial after the first ten factors. No factors after the first ten had more than one variable with high loading. Factor-weighted and factor-based scales are very highly correlated, therefore the choice of one over the other did not affect the results of the analyses.

Some comments noted that Census data are stronly influenced by population size and suggested that this effect could be removed to find a more meaningful structure.

A similar procedure was actually used. All count variables were transformed (e.g., number of vacant houses, number of people on welfare) into population proportions. This procedure removes the effects of population size.

Some comments suggested that users of the public mental health system have low levels of income. However, the key significant income predictor was an interaction term for high income and urbanicity associated with reduced prevalence of SMI.

The technical experts were surprised to find the absence of high income people was a stronger predictor of SMI than the presence of low income people. This was investigated in considerable detail, trying a number of different specifications in search of a low income effect. These included a specification involving the assessment of neighborhoods with a bimodal distribution of high income and low income people, as well as a specification that examined the effect of degree of variation in income in the community (e.g., differentiation between a community with an average income of $30,000 due to all families having this income versus another with an average of $30,000 due to 10% of families making $210,000 and another 90% making $10,000. After a careful review, the technical experts concluded that the data did not support a low income effect or any effect of income variance for SMI. It is important to note that there is a strong low income effect for estimates of persons with severe and persistent mental illness (SPMI), even though such an effect could not be found for SMI.

It is noteworthy that the analysis of income effects was confined to neighborhoods (Census Tracts) due to the fact that the Census Bureau would not release individual-level family income data cross-classified by other Census variables at either the Tract, County, or State levels. The Census Bureau decision was based on the concern to maintain confidentiality of Census records.

Some comments requested future consideration of SMI incidence.

Currently, no nationally representative data are available on incidence of SMI. The group of technical experts has made recommendations to CMHS regarding the need for future data collection to obtain incidence data.

*State Differences*

Some comments suggested that SMI prevalence was higher in the West and the Southwest, compared with other regions of the US.

The magnitude of the SMI estimates, averaging approximately 5–6% of the adult population in a year, is very plausible. It is generally agreed that 2–3% of the adult population suffer from severe and persistent disorders such as schizophrenia, other nonaffective psychoses, and bipolar disorder. Based upon the estimation methodology, an additional 2–3% of the adult population suffer from serious anxiety, nonbipolar mood disorders, and other disorders, for a total of 5–6%. It would be highly suspicious if the estimates were any less.

In the draft notice of the estimation methodology, point estimates were provided for State SMI prevalence figures. In this final notice, a 95% confidence interval is used to calculate the SMI prevalence rate as a range. State prevalence of SMI is estimated to be between the lower and upper percent limits for each State. Based on these analysis, one cannot conclude that rates differ among States. Hence, the same prevalence rate and percentage standard error are applied to all States to produce the numerical estimates provided in table 1. See the footnote to table 1 for further information on this estimation procedure.

Some comments noted that the inclusion of Alzheimer's disease contributes appreciably to the counts and that, since the definition cannot be changed at this point, the report should clearly note that this is the case.

This is a good suggestion.

Some comments suggested that only 10 States are at or below the national average, and that the majority of these States are quite small, therefore a mathematical explanation of this phenomenon would be appropriate.

This comment does not reflect the nature of the estimation methodology. As stated in the draft **Federal Register** notice of March 23, 1997, Volume 62, No 60, page 14931, the national total estimated number of persons with SMI is derived from direct, weighted counts

from the surveys used. However, the State totals were computed from synthetic modeling at the County level, and county estimates were summed to arrive at State totals. These two approaches are not the same. Therefore, they are subject to different types of sampling and non-sampling errors. As a result, the sum of State totals will not necessarily equal the U.S. total, and State estimates cannot be compared directly with the national average.

Some comments suggested that use of national probability estimates did not permit consideration of regional and state differences, which could affect the relationship between key analytical variables.

Because of the difficulty of obtaining data, the technical experts made the assumption that the effects of all the predictor variables were the same across all States. More precise estimates could have been made if representative samples from each State were available.

*Other Related Comments*

Some comments noted that the exclusion of homeless and institutionalized persons, those living in group quarters, and those without telephones excludes the segments of the population with the highest risk of SMI.

The Epidemiologic Cachement Area (ECA) and the National Commobidity Survey (NCS) studies were both household surveys, so there is no exclusion of non-telephone households. Although national data were used to estimate the overall U.S. prevalence of the omitted population groups, due to lack of data, no attempt was made to estimate how many homeless people or persons in the other excluded segments reside in each State.

Some comments suggested the need to have prevalence estimates for Puerto Rico.

The prevalence estimates for Puerto Rico are included in this notice.

Some comments suggested validity studies that could form the basis for modifications and refinements to the estimation methodology.

Validation studies could help refine the estimation methodology. However, the mandate to the technical experts was to develop the best estimates with currently available data rather than only propose new data collections. As noted earlier, the technical experts have recommended that CMHS carry out a nationally representative survey once each decade in the Census year explicitly designed to assess the prevalence of SMI and SPMI, with oversampling to allow estimation by State. Execution of validation studies as part of this survey would permit the evaluation of and increased precision in State-level estimates.

Some comments urged SAMHSA to increase Block Grant Funds for States to offer services to the number of persons who have SMI.

The first step in such a process is the one currently being undertaken, i.e., using the estimation methodology to produce estimates showing that the number of adults with SMI exceeds the number who can be served with currently available funds.

**SMI Estimation Methodology**

*Data Sources*

Data from two major national studies, the NCS and the ECA, were used to estimate the prevalence of adults with SMI. The NCS, a nationally representative sample household survey conducted in 1990–91 assessed the prevalence of DSM–III–R disorders in persons aged 15–54 years old. This sample included over 1,000 census tracts in 174 counties in 34 States. The ECA, a general population survey of five local areas in the U.S., was conducted in 1980–85 to determine the prevalence of DSM III disorders in persons age 18 and older. The ECA data utilized for the present analysis were limited to the Baltimore site because that was the only site that had disability data needed to operationalize the criteria for SMI. Although the Baltimore sample is not nationally representative, it is used in this analysis because the ECA provides a rough replication and check on the NCS data. Also, the NCS does not have data on persons age 55 and older, so the ECA data are used to estimate the prevalence of serious mental illness among persons 55 years and older.

The group of technical experts determined that it is not possible to develop estimates of incidence using currently available data. However, it is important to note that incidence is always a subset of prevalence. In the future, information on both incidence and prevalence data will need to be collected.

*Serious Mental Illness (SMI)*

As previously defined by CMHS, adults with a serious mental illness are persons 18 years and older who, at any time during a given year, had a diagnosable mental, behavioral, or emotional disorder that met the criteria of DSM–III–R *and* ''* * * that has resulted in functional impairment which substantially interferes with or limits one or more major life activities.* * *.'' The definition states that ''* * * adults who would have met functional impairment criteria during the referenced year without the benefit of treatment or other support services are considered to have serious mental illnesses. * * *'' DSM–III–R ''V'' codes, substance use disorders, and developmental disorders are excluded from this definition.

The following criteria were used to operationalize the definition of serious mental illness in the NCS and ECA data:

(1) Persons who met criteria for disorders defined as severe and persistent mental illnesses (SPMI) by the National Institute of Mental Health (NIMH) National Advisory Mental Health Council (National Advisory Mental Health Council, 1993).

To this group were added:

(2) Persons who had another 12-month DSM–III–R mental disorder (with the exclusions noted above), and

—Either planned or attempted suicide at some time during the past 12 months, or

—Lacked any legitimate productive role, or

—Had a serious role impairment in their main productive roles, for example, consistently missing at least one full day of work per month as a direct result of their mental health, or

-Had serious interpersonal impairment as a result of being totally socially isolated, lacking intimacy in social relationships, showing inability to confide in others, and lacking social support.

*Estimation Procedures*

Two logistic regression models were developed to calculate prevalence estimates for adults with SMI.

(a) A Census Tract Model for years in which the decennial U.S. census is conducted.

(b) A County-Level Model to be used in intercensal years.

In non-censal years, the county-level model will be used to estimate SMI prevalence, after adjusting for its known relationship with the census tract model.

*Formula*

Census-Tract Model

Using 1990 census data, a logistic regression model was developed to calculate predicted rates of SMI for each cell of an age by sex by race table for each of the 61,253 Census Tracts in the country. Next, the rates were multiplied by cell frequencies and subtotaled to derive tract-level estimates. Finally, the tract-level estimates were aggregated to arrive at county-level and state-level prevalence estimates of adults with SMI. This regression methodology is often used in small area estimation (Ericksen,

1974; Purcell & Kish, 1979). The actual Census Tract Model equation is specified immediately below:

PARAMETER ESTIMATES FOR CENSUS TRACT MODEL

| Predictor | Odds ratio | 95% Confidence interval |
|---|---|---|
| Intercept | *0.02 | (0.01–0.04) |
| **Individual-Level Variables** | | |
| Age: | | |
| 18–24 | *1.94 | (1.18–3.17) |
| 25–34 | 1.32 | (0.86–2.03) |
| 35–44 | 1.46 | (0.96–2.21) |
| 45–54 | 1.00 | |
| Sex: | | |
| Female | *2.23 | (1.57–3.19) |
| Male | 1.00 | |
| Race: | | |
| Nonhispanic white | 1.00 | |
| Black/Hispanic/other | *0.49 | (0.28–0.87) |
| Marital Status: | | |
| Married/Cohabiting | 1.00 | |
| Never Married | *3.90 | (1.15–3.08) |
| Separated/Divorced/Widowed | *1.88 | (2.41–6.31) |
| **Census Tract Level Variables** | | |
| F2 (High socio-economic status) | 1.16 | (0.90–1.49) |
| F4 (Immigrants) | 0.99 | (0.85–1.14) |
| **County-Level Variables** | | |
| County Urbanicity: | | |
| Metropolitan | 1.12 | (0.85–1.49) |
| Other | 1.00 | |
| **Interactions Among Variables** | | |
| FemaleXSeparated/Divorced/Widowed | *0.47 | (0.24–0.91) |
| FemaleXNever Married | *0.47 | (0.28–0.78) |
| Non WhiteXSeparated/Divorced/Widowed | *2.62 | (1.29–5.33) |
| Non WhiteXNever Married | 1.81 | (0.95–3.44) |
| FemaleXF2 | *0.70 | (0.51–0.96) |
| UrbanicityXF2 | *0.75 | (0.52–0.95) |
| F2XF4 | *0.78 | (0.64–0.94) |

*Significant at the .05 level, two tailed test; F2=Census Tract factor score for high socioeconomic status (SES); F4=Census Tract factor score for immigrants.

The estimate for persons 55 years and older is derived from analysis of ECA data in conjunction with NCS data. The prevalence ratios among ECA respondents ages 55–64 and 65 years and above, were found to be 84 and 31 percent as large, respectively, as the prevalence estimate for NCS respondents 18–54 years old, after controlling for differences in gender and race. NCS State-level estimates were extrapolated using these ratios. These ratios did not differ significantly by sex or race. A factor of .81 was applied to State-level SMI estimates for the age range 18–54 to derive the rate for the age range 55–64, and .31 was used to arrive at the estimate for person 65 and older. A weighted sum (by age distribution of each State) was calculated to determine the final State-level SMI prevalence estimate.

County Model

U.S. Census Bureau tract-level data are available only for years in which the decennial U.S. Census is conducted. To obtain prevalence estimates for adults with SMI during intercensal years, the group of technical experts used biennial individual- and county-level data from the Census Bureau's small area estimation program. Predicted values from the logistic regression equation were used to calculate county-level estimates. In contrast to the Census Tract Model, the initial estimates using this approach were generated at the county level. These county-level estimates are then summed to provide State-level prevalence estimates. The actual county-level model equation is specified immediately below:

PARAMETER ESTIMATES FOR COUNTY-LEVEL MODEL

| Predictor | Odds ratio | 95% Confidence interval |
|---|---|---|
| Intercept | * 0.04 | (0.02–0.07) |

PARAMETER ESTIMATES FOR COUNTY-LEVEL MODEL—Continued

| Predictor | Odds ratio | 95% Confidence interval |
|---|---|---|
| **Individual-Level Variables** | | |
| Age: | | |
| 18–24 | 1.69 | (1.00–2.85) |
| 25–34 | 1.10 | (0.65–1.88) |
| 35–44 | 1.24 | (0.71–2.15) |
| 45–54 | 1.00 | ..... |
| Sex: | | |
| Female | 1.58 | (1.17–2.13) |
| Male | 1.00 | ..... |
| **County-Level Variables** | | |
| Urbanicity: | | |
| Metropolitan | 1.35 | (0.99–1.85) |
| Other | 1.00 | ..... |

*Significant at the 0.05 level, two-tailed test.

Adjustment for persons age 55 years and older is carried out as in the Census Tract Model. An adjustment factor (Census Bureau, Fay, 1987; Fay & Herriot, 1979) based on the ratio of County-Level Model estimates for 1990 and Census Tract Model estimates for 1990 can be used to adjust estimates for subsequent years from the County-Level Model. This procedure assumes that the Census Tract Model is more accurate than the County-Level Model.

*County and State Estimates*

As stated earlier, Census Tract Model prevalence estimates were summed to derive county estimates, and county estimates were summed to arrive at State estimates. The 12-month prevalence of SMI is estimated nationally to be 5.4 percent (with a standard error of 0.9 percent) or 10.2 million people in the adult household population (95 percent confidence interval ranging from 7.0 million to 13.4 million), of which 2.6 percent or 4.8 million adults have SPMI (figure 1). When the standard error is considered, State estimates do not vary. Hence, State estimates are defined as 5.4 percent of the adult population, with a 95 percent confidence interval of plus or minus 1.96 times 0.9 percent.

The above estimates are based on noninstitutionalized persons residing in the community. Limited information currently exists on SMI estimates for persons institutionalized (i.e., persons in correctional institutions, nursing homes, the homeless, persons in military barracks, hospitals/schools/homes for persons who are mentally ill or mentally retarded). Fischer and Breakey (1991) indicate that, on average, the SMI prevalence rate for these groups (including about 5 million people or 2.7 percent of the U.S. adult population) is about 50 percent. The following assumptions were made in deriving rough estimates of SMI prevalence for persons who are institutionalized: (a) For 1.1 million residents of correctional institutions, 100 percent of whom are adults, prevalence of SMI is estimated to be 57 percent; (b) For 1.8 million residents of nursing homes, 100 percent of whom are adults, prevalence of SMI is estimated to be 46 percent; (c) For 0.5 million persons who are homeless, 80 percent of whom are adults, prevalence of SMI is estimated to be 50 percent; (d) For 0.6 million persons in military barracks, all of whom are adults, the SMI prevalence rate is equivalent to that of the adult household population; (e) For 0.4 million persons in hospitals, homes, and schools for persons who are mentally ill, 80 percent of whom are adults, prevalence of SMI is estimated to be 100 percent. (f) For 0.6 million persons in other institutional settings such as chronic disease hospitals, homes and schools for persons with physical disability, and rooming houses, 50 percent of whom are adults, prevalence of SMI is estimated to be 50 percent.

State estimates of each of these populations can be added to the State SMI populations identified below.

Only a portion of adults with SMI seek treatment in any given year. Due to the episodic nature of SMI, some persons may not require mental health service at any particular time.

*Provision of Estimates to States*

CMHS will provide each State mental health agency with estimates in order to initiate the first cycle of use. Subsequently, CMHS will provide technical assistance to States to implement the methodology using State demographic information.

The intial set of State estimates is provided in table 1 below. Further background information on these estimates can be found in Kessler, et al. (1998).

TABLE 1.—ESTIMATED 12-MONTH NUMBER OF PERSONS WITH SERIOUS MENTAL ILLNESS, AGE 18 AND OLDER

[By State, 1990*]

| State | Point estimate | 95% confidence interval | |
|---|---|---|---|
| | | Lower limit | Upper limit |
| Alabama | 161,017 | 110,327 | 211,708 |
| Alaska | 20,396 | 14,730 | 26,817 |
| Arizona | 144,942 | 104,680 | 190,572 |
| Arkansas | 93,398 | 63,995 | 122,801 |
| California | 1,188,502 | 814,344 | 1,562,660 |
| Colorado | 131,389 | 90,026 | 172,752 |

TABLE 1.—ESTIMATED 12-MONTH NUMBER OF PERSONS WITH SERIOUS MENTAL ILLNESS, AGE 18 AND OLDER—Continued

[By State, 1990 *]

| State | Point estimate | 95% confidence interval | |
|---|---|---|---|
| | | Lower limit | Upper limit |
| Connecticut | 137,027 | 93,889 | 180,165 |
| Delaware | 27,153 | 18,605 | 35,701 |
| District Columbia | 26,450 | 18,123 | 34,776 |
| Florida | 543,871 | 372,652 | 715,090 |
| Georgia | 256,549 | 175,784 | 337,315 |
| Hawaii | 44,718 | 30,640 | 58,795 |
| Idaho | 37,711 | 27,235 | 49,582 |
| Illinois | 458,149 | 313,917 | 602,381 |
| Indiana | 220,763 | 151,263 | 290,262 |
| Iowa | 111,125 | 76,141 | 146,109 |
| Kansas | 98,062 | 67,190 | 128,933 |
| Kentucky | 147,485 | 101,054 | 193,915 |
| Louisiana | 161,606 | 110,730 | 212,482 |
| Maine | 49,622 | 34,000 | 65,244 |
| Maryland | 195,438 | 133,911 | 256,965 |
| Massachusetts | 251,821 | 172,544 | 331,098 |
| Michigan | 369,173 | 252,952 | 485,394 |
| Minnesota | 173,249 | 118,708 | 227,790 |
| Mississippi | 98,629 | 67,579 | 129,678 |
| Missouri | 205,321 | 140,683 | 269,959 |
| Montana | 31,156 | 21,348 | 40,964 |
| Nebraska | 62,066 | 42,527 | 81,605 |
| Nevada | 48,864 | 33,481 | 64,247 |
| New Hampshire | 44,847 | 30,728 | 58,965 |
| New Jersey | 320,259 | 219,437 | 421,082 |
| New Mexico | 57,690 | 39,528 | 75,851 |
| New York | 741,469 | 535,505 | 974,894 |
| North Carolina | 271,214 | 185,832 | 356,597 |
| North Dakota | 25,024 | 17,146 | 32,902 |
| Ohio | 434,558 | 297,753 | 571,363 |
| Oklahoma | 124,663 | 85,417 | 163,909 |
| Oregon | 114,382 | 78,373 | 150,392 |
| Pennsylvania | 490,689 | 336,213 | 645,165 |
| Puerto Rico | 195,719 | 159,550 | 231,817 |
| Rhode Island | 42,000 | 28,778 | 55,222 |
| South Carolina | 138,591 | 94,960 | 182,221 |
| South Dakota | 26,867 | 18,409 | 35,325 |
| Texas | 656,136 | 449,575 | 862,698 |
| Tennessee | 197,671 | 135,441 | 259,901 |
| Utah | 59,152 | 40,530 | 77,774 |
| Vermont | 22,662 | 15,528 | 29,797 |
| Virginia | 252,861 | 173,257 | 332,466 |
| Washington | 194,686 | 133,396 | 255,977 |
| West Virginia | 72,895 | 49,946 | 95,843 |
| Wisconsin | 194,550 | 133,303 | 255,798 |
| Wyoming | 17,175 | 11,768 | 22,582 |
| Total | 10,191,412 | 7,043,431 | 13,374,301 |

Does not include persons who are homeless or are institutionalized.

*Because there are no differences among States, the estimate for each State is calculated as 5.4 percent of the total State adult population. The size of the 95 percent confidence interval for each State is equal to the percentage estimate plus or minus 1.96x0.9 percent. The percentage estimate and the percentage standard error are identical across States. However, the numeric estimate and numeric standard error vary depending on the State adult population. The percentage standard error (0.9 percent) used to compute the upper and lower 95-percent confidence limits is estimated using jackknife repeated replication (JRR) variance analysis (Kish and Frankel 1974). The JRR calculations assume that the imputation ratios and the population proportions in the different age groups based on the census data are correct. The confidence limits simulate the error introduced into the estimates by imprecision in the prevalence estimates for NCS respondents in the age range 18–54.

*Limitations*

The ECA and NCS were designed to study lifetime prevalence of mental disorders rather than 12-month prevalence. As a result, the emphasis in diagnostic assessment was on lifetime disorders. In addition, functional impairment was not a primary focus in either the ECA or the NCS.

Current data cannot provide estimates of incidence. Additional information needs to be collected in the future.

It is anticipated that additional work will be done in future years to refine and update the estimation methodology. CMHS will apprise States as this work develops.

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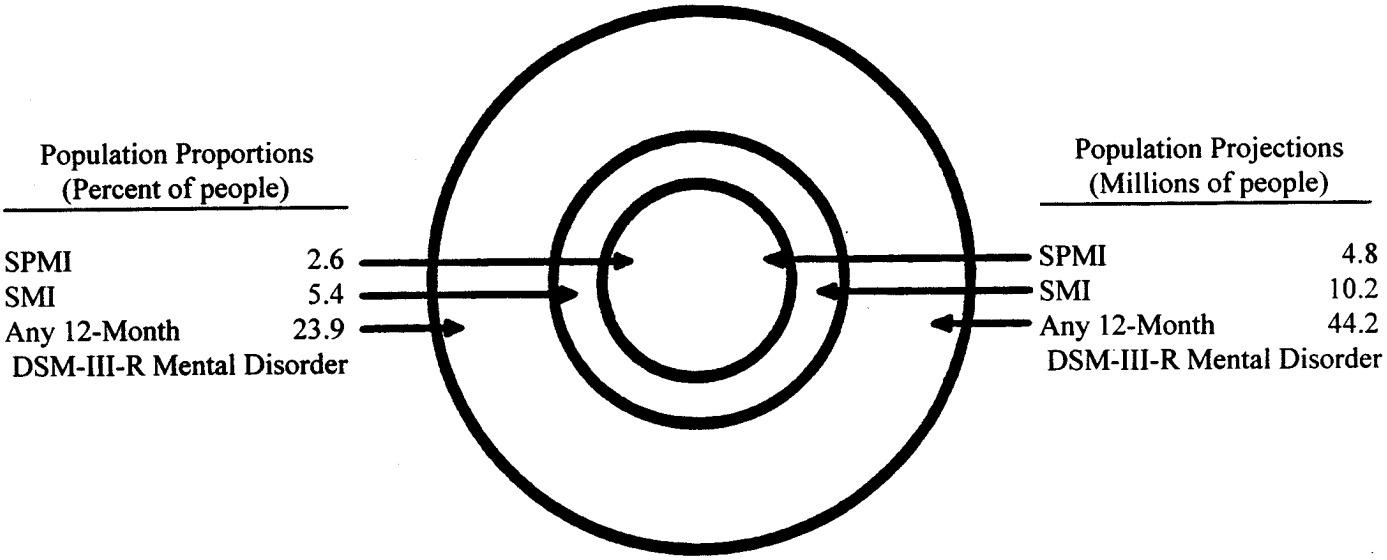
Dated: June 7, 1999.

**Richard Kopanda,**

*Executive Officer, Substance Abuse and Mental Health Services Administration.*

BILLING CODE 4162–20–P

Figure 1. Estimated Total Population (Ages 18+) 12-Month Prevalences and Population Projections of DSM-III-R Severe and Persistent Mental Illness (SPMI), Serious Mental Illness (SMI), and Any Mental Illness Based on Pooled Baltimore ECA/NCS Data




[FR Doc. 99–15377 Filed 6–23–99; 8:45 am]

BILLING CODE 4162–20–C

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Center for Substance Abuse Treatment, and Center for Substance Abuse Prevention; Fiscal Year 1999 Funding Opportunity

**AGENCIES:** Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment (CSAT), and Center for Substance Abuse Prevention (CSAP).

**ACTION:** Notice of availability of funds for grants to support the development of community-based practice/research collaboratives.

**SUMMARY:** The U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) and the Center for Substance Abuse Prevention (CSAP), announce the availability of FY 1999 funds for grants for the following activity. This activity is discussed in more detail under section 4 of this notice. This notice is not a complete description of the activity; potential applicants must obtain a copy of the Guidance for Applicants (GFA) before preparing an application.

**Note:** SAMHSA also published notices of available funding opportunities for FY 1999 in previous issues of the **Federal Register**.

| Activity | Application deadline | Estimated funds available | Estimated Number of awards | Project period |
|---|---|---|---|---|
| Practice/Research Collaboratives | 08/11/99 | $2.5 Million | 8–10 | 1 year. |

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 1999 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 105–277. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001-00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800).

*General Instructions:* Applicants must use application form PHS 5161–1 (Rev. 5/96; OMB No. 0937–0189). The application kit contains the GFA (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from the organization specified for the activity covered by this notice (see Section 4).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 application form and the full text of the activity (i.e., the GFA) described in section 4 are available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov).

*Application Submission:* Applications must be submitted to: SAMHSA Programs, Center for Scientific Review, National Institutes of Health, Suite 1040, 6701 Rockledge Drive MSC–7710, Bethesda, Maryland 20892–7710.

(Applicants who wish to use express mail or courier service should change the zip code to 20817.)

*Application Deadlines:* The deadline for receipt of applications is listed in the table above.

Competing applications must be received by the indicated receipt date to be accepted for review. An application received after the deadline may only be accepted if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Applications received after the deadline date and those sent to an address other than the address specified above will be returned to the applicant without review.

**FOR FURTHER INFORMATION CONTACT:** Requests for activity-specific technical information should be directed to the program contact person identified for the activity covered by this notice (see section 4).

Requests for information concerning business management issues should be directed to the grants management contact person identified for the activity covered by this notice (see section 4).

## 1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA moved assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

SAMHSA's FY 1999 Knowledge Development and Application (KD&A) agenda is the outcome of a process whereby providers, services researchers, consumers, National Advisory Council members and other interested persons participated in special meetings or responded to calls for suggestions and reactions. From this input, each SAMHSA Center developed a ''menu'' of suggested topics. The topics were discussed jointly and an agency agenda of critical topics was agreed to. The selection of topics depended heavily on policy importance and on the existence of adequate research and practitioner experience on which to base studies. While SAMHSA's FY 1999 KD&A programs will sometimes involve the evaluation of some delivery of services, they are services studies and application activities, not merely evaluation, since they are aimed at answering policy-relevant questions and putting that knowledge to use.

SAMHSA differs from other agencies in focusing on needed information at the services delivery level, and in its question-focus. Dissemination and application are integral, major features of the programs. SAMHSA believes that it is important to get the information into the hands of the public, providers, and systems administrators as effectively as possible. Technical assistance, training, preparation of special materials will be used, in addition to normal communications means.

SAMHSA also continues to fund legislatively-mandated services programs for which funds are appropriated.

## 2. Special Concerns

SAMHSA's legislatively-mandated services programs do provide funds for mental health and/or substance abuse treatment and prevention services. However, SAMHSA's KD&A activities do not provide funds for mental health and/or substance abuse treatment and prevention services except sometimes for costs required by the particular activity's study design. Applicants are required to propose true knowledge application or knowledge development

and application projects. Applications seeking funding for services projects under a KD&A activity will be considered nonresponsive.

Applications that are incomplete or nonresponsive to the GFA will be returned to the applicant without further consideration.

**3. Criteria for Review and Funding**

Consistent with the statutory mandate for SAMHSA to support activities that will improve the provision of treatment, prevention and related services, including the development of national mental health and substance abuse goals and model programs, competing applications requesting funding under the specific project activity in Section 4 will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures.

*3.1 General Review Criteria*

As published in the **Federal Register** on July 2, 1993 (Vol. 58, No. 126), SAMHSA's ''Peer Review and Advisory Council Review of Grant and Cooperative Agreement Applications and Contract Proposals,'' peer review groups will take into account, among other factors as may be specified in the application guidance materials, the following general criteria:

- Potential significance of the proposed project;
- Appropriateness of the applicant's proposed objectives to the goals of the specific program;
- Adequacy and appropriateness of the proposed approach and activities;
- Adequacy of available resources, such as facilities and equipment;
- Qualifications and experience of the applicant organization, the project director, and other key personnel; and
- Reasonableness of the proposed budget.

*3.2 Funding Criteria for Scored Applications*

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process.

Other funding criteria may include:

- Availability of funds.

**4. Special FY 1999 SAMHSA Activity**

*4.1. Bridging the Gap: Developing Community-Based Practice/Research Collaboratives (Short Title: Practice/Research Collaboratives, TI 99–006)*

- Application Deadline: August 11, 1999.
- Purpose: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of grants to support the development of Practice/Research Collaboratives hereinafter referred to as PRCs. The purpose of this program is to improve the quality of substance abuse clinical preventive and treatment services by increasing interaction and knowledge exchange among key community based stakeholders, including substance abuse treatment providers, community-based organizations providing support services to substance abusers, researchers, and policy makers, including health plan managers and purchasers of substance abuse treatment. It is expected that the PRCs will develop the necessary infrastructure and capacity to further knowledge development and to be able to participate effectively in federally-funded knowledge development and applications projects. Through these efforts, the PRCs will be able, over time, to make significant contributions to the field's knowledge and understanding about substance abuse treatment and related clinical preventive practices. SAMHSA's Center for Substance Abuse Prevention is participating with CSAT in this initiative.

This program is eventually expected to have two types of grants: Development Grants and Implementation Grants. This announcement (GFA No. TI99–006) provides guidelines for Development Grant applications only.

- Priorities: None.
- Eligible Applicants: Applications for Development Grants may be submitted by domestic public and private nonprofit and for-profit entities, such as community-based organizations, public or private universities, colleges, and hospitals, and units of State or local government.
- Grants/Amount: It is estimated that $2.5 million will be available to support approximately 8–10 Development awards under this program in FY 1999. Awards are not expected to exceed $250,000 in total costs (direct+indirect). CSAT anticipates that next fiscal year there will be funds to support both Development and Implementation Grants.
- Period of Support: Support will be available for a period of 12 months to develop full network membership, establish the operational model proposed for the PRC, and develop research and knowledge application plans in preparation for submitting a separate application for an Implementation Grant.
- Catalog of Domestic Federal Assistance: 93.230.
- Program Contact: For programmatic or technical assistance (not for application kits) contact:

Fran Cotter, Office of Managed Care, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 740, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–8796,
or
Ed Craft, Ph.D., Office of Evaluation, Scientific Analysis and Synthesis, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 840, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3953

- For grants management assistance, contact: Peggy Jones, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 614, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–9666.
- Application kits are available from: National Clearinghouse for Alcohol and Drug Information, PO Box 2345, Rockville, MD 20847–2345, (1–800) 729–6686.

**5. Public Health System Reporting Requirements**

This program is not subject to the Public Health System Reporting Requirements.

**6. PHS Non-use of Tobacco Policy Statement**

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

**7. Executive Order 12372**

Applications submitted in response to the FY 1999 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally

recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Office of Extramural Activities, Policy and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: June 18, 1999.

**Richard Kopanda,**

*Executive Officer, Substance Abuse and Mental Health Services Administration.*

[FR Doc. 99–16141 Filed 6–23–99; 8:45 am]

BILLING CODE 4162–20–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4456–N–02]**

## Privacy Act; Proposed New System of Records

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Establish a new system of records.

**SUMMARY:** The Department of Housing and Urban Development (HUD) proposes to establish a new record system to add to its inventory of systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed new system of record is entitled Compliance Case Tracking System (CCTS–F73), HUD/EC–01. This system of records contains information on individuals, corporations, partnerships, associations, unit of government or legal entities who have been suspended, or debarred, or who are ineligible to participate in HUD programs or those whose records of participation in HUD programs are being reviewed for possible administrative actions to exclude them from further participation.

**DATES:** *Effective date:* This action shall be effective without further notice in 30 calendar days (July 24, 1999) unless comments are received during or before this period that would result in a contrary determination.

*Comments due by:* July 26, 1999.

**ADDRESSES:** Interested persons are invited to submit comments regarding this new system of records to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. An original and four copies of comments should be submitted. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jeanette Smith, Departmental Privacy Act Officer, Telephone Number (202) 708–2374, or Richard Delaubansels, Compliance Analyst, Telephone Number (202) 708–3041 extension 3569.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended notice is given that HUD proposes to establish a new system of records identified as HUD/EC–01, Compliance Case Tracking System (CCTS–F73).

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be afforded a 30-day period in which to comment on the new record system.

The new system report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Governmental Affairs, and the House Committee on Government Operations pursuant to paragraph 4c of Appendix 1 to OMB Circular No. A–130, ''Federal Responsibilities for Maintaining Records About Individuals,'' July 25, 1994; 59 FR 37914.

**Authority:** 5 U.S.C. 552a 88 Stat. 1896; 342 U.S.C. 3535(d).

Dated: June 14, 1999.

**Glorida R. Parker,**

*Chief Information Officer.*

**HUD/EC–01**

**SYSTEM NAME:**

Compliance Case Tracking System (CCTS—F73).

**SYSTEM LOCATION:**

HUD Computer Center, Lanham, Maryland.

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

Any individual, corporation, partnership, association, unit of government or legal entity, however organized,—except; foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially to foreign governments or foreign governmental entities—proposed for debarment, suspended, debarred, or voluntarily excluded government-wide, unless otherwise noted, from Federal procurement and sales programs, non-procurement programs, and financial benefits. An exclusion may be based on the Federal Acquisition Regulation (FAR) 9.4; Federal Property Management Regulation (FPMR) 101–45.6; Government Printing Office (GPO) Instruction 110.11 A; U.S. Postal Service (PS) Publication 41; the Non-procurement Common rule; or the authority of a statute, Executive Orders 12549 and 12689 or regulation applying to procurement or non-procurement programs. Following are some examples of individuals or persons (proposed for debarment, debarred, suspended, or voluntarily excluded): participants who are direct or indirect recipients of HUD funds; and those who represent entities such as contractors or corporations who are participants in HUD FHA assisted or sponsored programs including mortgage insurance programs.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The automated database contains pertinent information obtained from hard copy compliance case files. These automated records contain, but are not limited to: Names; addresses of all persons proposed for debarment; persons debarred, suspended, or excluded by a Limited Denial of Participation (LDP) action; cross-references when more than one name is involved in a single action; the type of action; the cause of the action; the scope of the action; any termination date for each listed action; and the agency name and telephone number of the agency point of contact for the action. The system also contains records of referrals for administrative sanction action where action is pending or where no action was taken.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Executive Orders 12549 and 12689; U.S.C. 31, 41, and 42.

**PURPOSE(S):**

To the extent permitted by law, executive departments and agencies shall participate in a government-wide system for the following purposes: (1) To exclude from Federal financial and non-financial assistance and benefits under Federal programs and activities those who have been debarred or suspended; and (2) to include in the List of Parties Excluded from Federal Procurement and Nonprocurement Programs all persons proposed for debarment, debarred, suspended, or excluded by a Limited Denial of Participation (LDP).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside of the agency as routine use pursuant to 5 U.SC. 552a(b)(3) as follows, provided that no routine use listed shall be construed to limit or waive any other routine use specified herein:

(a) Internal Revenue Service (IRS)—for the purpose of effecting an administrative offset against the debtor for a delinquent debt owed to the U.S. Government by the debtor.

(b) Department of Justice (DOJ)—for prosecution of fraud, and for the institution of suit or other proceedings to effect collection of claims.

(c) General Accounting Office (GAO)—for further collection action on any delinquent account when circumstances warrant.

(d) Outside collection agencies and credit bureaus—for the purpose of either adding to a credit history file or obtaining a credit history file on an individual for use in the administration of debt collection for further collection action.

(e) U.S. General Services Administration (GSA)—for compilation and maintenance of a List of Parties Excluded From Federal Procurement and Non-procurement Programs in accordance with a recommendation from the Interagency Committee on Debarment and Suspension, and identification and monthly distribution of a list of those parties excluded throughout the U.S. Government (unless otherwise noted) from receiving Federal contracts or certain subcontracts and from certain types of federal financial and non-financial assistance and benefits.

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

**STORAGE:**

The automated records are stored and saved in access files in the CCTS (F73 System).

**RETRIEVABILITY:**

These records are retrieved by names of individuals and companies.

**SAFEGUARDS:**

The automated records are stored and saved in limited access files in the CCTS (F73 System) and available only to those persons whose official duties require such access.

**RETENTION AND DISPOSAL**

CCTS (F73 System) users, in accordance with internal retention procedures, maintain records relating to each suspension or debarment action taken by the Agency. Automated records are retained in the CCTS (F73 System) and kept up to date.

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

Director, Departmental Enforcement Center, 1250 Maryland Avenue, Southwest, Suite 200, Washington, DC 20024.

**NOTIFICATION PROCEDURES:**

For information, assistance, or inquiry about the existence of records, contact the Privacy Act Officer at HUD, 451 7th Street, SW, room P8202, Washington, DC 20410, in accordance with the procedures in 24 CFR Part 16.

**RECORD ACCESS PROCEDURES:**

The Department's rule for providing access to records to the individual concerned appear in 24 CFR, part 16. If additional information or assistance is required, contact the Privacy Act Officer at HUD, 451 7th Street SW, room P8202, Washington, DC 20410.

**CONTESTING RECORD PROCEDURES:**

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned appear in 24 CFR, part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents of records, the Privacy Act Officer at HUD, 451 7th Street, SW, room P8202, Washington, DC 20410; and (ii) in relation to appeals of initial denials, the Department of Housing and Urban Development (HUD), Departmental Privacy Appeals Officer, Office of General Counsel, HUD, 451 Seventh Street, Southwest, Washington, DC 20410.

**RECORD SOURCE CATEGORIES:**

IInformation in this system of records is obtained from any source which has information to provide concerning the existence of a cause for administrative sanction. Examples of record sources include, but are not limited to HUD employees, Federal government agencies, non-federal government agencies, Federal and state courts, financial institutions, state and local law enforcement offices, and regulatory or licensing agencies.

**EXEMPTIONS FOR CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 99–16135 Filed 6–23–99; 8:45 am]
**BILLING CODE 4210–01–M**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4456–N–03]**

## Privacy Act; Proposed New System of Records

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Establish a new system of records.

**SUMMARY:** The Department of Housing and Urban Development (HUD) proposes to establish a new record system to add to its inventory of systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed new system is entitled Equal Employment Opportunity Monitoring and Analysis System (EEOMAS), HUD/ODEEO/01. EEOMAS is the management information system used to monitor and evaluate the Department's equal employment and affirmative employment efforts and accomplishments. It contains selected personal information on each HUD employee which is essential in conducting demographic analyses between the work force and the civilian labor force and concentration analyses of the dispersion of employees within the work force.

**DATES:** *Effective Date:* This action shall be effective without further notice in 30 calendar days (July 24, 199) unless comments are received during or before this period that would result in a contrary determination.

*Comments due by:* July 26, 1999.

**ADDRESSES:** Interested persons are invited to submit comments regarding this new system of records to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street,

SW, Washington, DC 20410–05000. Communications should refer to the above docket number and title. An original and four copies of the comments should be submitted. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jeanette Smith, Department Privacy Act Officer, Telephone Number (202) 708–2374, or Thelma Cockrell, Departmental Affirmative Employment Program Manager, Telephone Number (202) 708–5921, extension 6866.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended notice is given that HUD proposes to establish a new system of records identified as HUD/ODEEO/01, Equal Employment Opportunity Monitoring and Analyses system (EEOMAS).

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be afforded a 30–day period in which to comment on the new record system.

The new system report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Governmental Affairs, and the House Committee on Government Operations pursuant to paragraph 4c of Appendix 1 to OMB Circular No. A–130, ''Federal Responsibilities for Maintaining Records About Individuals,'' July 25, 1994, 59 FR 37914.

Dated: June 14, 1999.

**Gloria R. Parker,**

*Chief Information Officer.*

**HUD/ODEEO/01**

**SYSTEM NAME:**

Equal Employment Opportunity Monitoring and Analysis System (EEOMAS).

**SYSTEM LOCATION:**

Department of Housing and Urban Development, HUD 451 Seventh Street SW, Room 2112, Washington, DC 20410

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

Personal and employment related data items on each HUD employee, and information on EEO discrimination complaint processing covering both HUD employees and applicants for employment.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

This system contains ''selected'' personal information on each employee, depending on the employee's type of appointment with the Department, including the employee's: Full name, Date of Birth, Social Security Number, Race, Sex, Disability Status, Pay Plan, Grade and Step, Annual Salary, Occupational Series, Position Title, Organization Code, GSA Location Code, Duty Station, Veteran Preference, Type of Appointment, Tenure Group, Work Schedule, Type of Employment, FLSA, Bargaining Unit Status, Occupational Category, Type of Position, Supervisory Status, Position Sensitivity, Education Level, Academic Discipline, Year of Degree, Special Employee Code, Special Program Code Performance Rating, Performance Year, Enter on Duty Date w/HUD, Date last Grade Promotion, Target Grade, and Date entered Present Position.

The EEO Discrimination Complaint processing portion of the system contains information on complaints, both formal and informal, filed by HUD employees and applicants for employment. The information in EEOMAS includes, but is not limited to: Complainant's Name, Social Security Number, Complaint Type, Alleged Discriminating Official, Basis/Issues, Witnesses, Related Correspondence, Step-by-Step Processing Record, Final Disposition, and Summary of Complaint

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

The legal bases for maintaining the system are:

Section 717 of Title VII of the Civil Rights Act of 1964, as amended, to ensure enforcement of Federal equal employment opportunity policy; to requires Federal agencies to maintain Affirmative Employment Programs apply the same legal standards to prohibit discrimination established for private employers; and to eliminate discrimination that Congress found existing throughout the Federal employment system. The Rehabilitation Act of 1973, as amended, required the same for persons with disabilities;

The Uniform Guidelines on Employee Selection Procedures, dated 8/78, requires records to be maintained which allow determinations to be made of the impact of selection procedures on members of various race, sex and ethnic groups;

The Civil Service Reform Act of 1978, requires Federal agencies to conduct affirmative recruitment for those occupations and grades within their work force in which underrepresentation of women and minorities exists;

Equal Employment Opportunity Commission (EEOC) Management Directive (MD) 702, dated 12/79, required that Federal agencies develop and implement information systems that provide periodical status reports on a statistical work force profiles and on affirmative employment objectives; and

Federal Personnel Manual (FPM) Letters 720–4, dated 1/80 and 720–6, dated 10/80, established broad instructions and procedures for the collection of race, sex, and ethnic origin data on job applicants.

**PURPOSE(S):**

The Equal Employment Opportunity Monitoring and Analysis System is the management information system used to monitor and evaluate the Department's equal employment opportunity and affirmative employment efforts and accomplishments.

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

None.

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

**STORAGE:**

EEOMAS is a LAN based computerized system. The data is updated quarterly using the National Finance Center (NFC) data extracts. The data is downloaded into EEOMAS via mainframe computer.

**RETRIEVABILITY:**

Since EEOMAS is an internal management information system used to monitor, evaluate, and report the effectiveness of the Department's EEO/AE Program, the data is retrievable by any of the data items listed under ''Categories of Records in the System.'' However, all EEOMAS Users, excluding those in the Office of Departmental Equal Employment Opportunity, have restricted access. Those users cannot retrieve individually identified personal privacy information

**SAFEGUARDS:**

EEOMAS is a LAN based computerized system and only authorized users have the EEOMAS icon on their computers.

In addition to the icon, only those users who have been entered into EEOMAS as ''authorized'' and assigned a password can access it. EEOMAS access passwords are assigned and entered by the designated System Administrators in ODEEO.

All EEOMAS Users, excluding ''need to know'' ODEEO staff, have ''Browse Only'' access to non-restricted information.

Authorized EEOMAS Users have limited access to their respective organizations (i.e. authorized EEOMAS

Users in Housing can view only Housing data, etc.).

All individually identified employee information in EEOMAS for which unauthorized disclosure would constitute an unwarranted invasion of personal privacy (employee name in conjunction with the race, sex, age, date of birth, social security number, etc.) has been deleted or shaded from view by all EEOMAS Users, except ODEEO's ''need to know'' staff.

All information is stored in a computerized database. Any hard copy reports, not in statistical format, generated from the database are kept in locked offices with restricted access.

**RETENTION AND DISPOSAL:**

All EEO/AE data must be retained for a period of five (5) years in accordance with HUD's Record Disposition Schedule, after which computerized data is erased. All statistical hard copy reports are recycled. Any reports containing personal privacy data are shredded.

**SYSTEM MANGER(S) AND ADDRESS:**

Director, Affirmative Employment Division, Director, Equal Opportunity Division, Departmental Affirmative Employment Program, 451 Seventh Street, SW, Room 2112, Washington, DC 20410.

**NOTIFICATION PROCEDURES:**

For information, assistance, or inquiry about the existence of records, contact the Privacy Act Officer at the Department of Housing and Urban Development, 451 7th Street SW, Room P8202, Washington, DC 20410, in accordance with procedures in 24 CFR part 16.

**CONTESTING RECORD PROCEDURES:**

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appears in 24 CFR part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contests of records, the Privacy Act Officer at the appropriate location, the Department of Housing and Urban Development, 451 Seventh Street, SW, Room P8202, Washington, DC 20410 and (ii) in relation to appeals of initial denials, the Department of Housing and Urban Development, Departmental Privacy Appeals Officer, Office of General Counsel, 451 Seventh Street, Southwest, Washington, DC 20410.

**RECORD SOURCE CATEGORIES:**

Initial employee personal information is collected when first appointed as HUD employees (i.e. full name, social security, date of birth, disability status, etc.).

Initial position/employment related information for each employee is derived from the type of appointment and specific position (title, series, grade, organization, duty station, etc.) under/for which they were hired.

Updates to information on current employees are the results of personnel actions affecting employees (i.e. promotions, reassignments, etc.) and those self initiated by employees (i.e. changes in disability status/medical condition).

Information on EEO Discrimination Complaint processing is collected and entered directly into EEOMAS by ODEEO staff as complaints are filed and processed.

**EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 99–16136 Filed 6–23–99; 8:45 am]

**BILLING CODE 4210–01–M**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–012640

*Applicant:* The Peregrine Fund, Boise, ID

The applicant requests a permit to import from the United Kingdom up to 30 DNA samples (0.1 to 0.25ml per vial) taken from wild Madagascar sea eagles (*Haliaeetus vociferoides*) for the purpose of scientific research.

PRT–012336

*Applicant:* Oregon State University, Corvallis, OR

The applicant requests a permit to import from South Africa up to 20 serum samples (5.0 to 7.0ml per vial) taken from wild African elephants (*Loxodonta africana*) for the purpose of enhancement through scientific research.

PRT–002843

*Applicant:* University of Florida, Gainesville, FL

The applicant requests a permit to import one farm-raised Asian bonytongue (*Scleropages formosus*) from CV. Dua Ikan Selarus, Jakarta, Indonesia for the purpose of enhancement of the species through conservation education.

PRT–012823

*Applicant:* University of Florida, Ruskin, FL

The applicant requests a permit to import blood samples from captive-bred Siamese crocodile (*Crocodylus siamensis*) from the Sriracha Farm (Asia) Co., Ltd., Chonguri, Thailand, for scientific research.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 et seq.) and the regulations governing marine mammals (50 CFR 18).

PRT–013327

*Applicant:* Victor E. Moss, Winthrop, WA

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort sea polar bear population, Northwest Territories, Canada for personal use.

PRT–013352

*Applicant:* Fred Wiedenfeld, San Antonio, TX

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel Polar population, Northwest Territories, Canada for personal use.

PRT–013353

*Applicant:* John DeFalco, Fullerton, CA

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Northern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

PRT–013350

*Applicant:* Timothy Brammer, Fishers, IN

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT–011354

*Applicant:* Jeffrey Gephart, Marguette, MI

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock

Channel Polar population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: June 18, 1999.

**Pamela Hall,**

*Acting Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 99–16057 Filed 6–23–99; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Availability of a Draft Revised Recovery Plan for *Liatris helleri* (Heller's Blazing Star) for Review and Comment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability and public comment period.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft revised recovery plan for *Liatris helleri* (Heller's blazing star). Heller's blazing star is a perennial herb that grows on high cliffs, rock ledges, and balds in the Blue Ridge Mountains of western North Carolina. We solicit review and comments from the public on this draft revised plan.

**DATES:** Your comments on the draft revised recovery plan must be received on or before August 23, 1999 in order to receive consideration..

**ADDRESSES:** If you wish to review the draft revised recovery plan, you may obtain a copy by contacting the Asheville Field Office. U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801 (Telephone 828/258–3939). Written comments and materials regarding the plan should be addressed to the State Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Ms. Nora Murdock at the address and telephone number shown in the **ADDRESSES** section (Ext. 231).

**SUPPLEMENTARY INFORMATION:**

#### Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to the approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft revised recovery plan is *iatris helleri* (Heller's blazing star). The areas of emphasis for recovery actions are the North Carolina counties of Avery, Caldwell, Burke, and Ashe. Habitat protection, population augmentation and reintroduction, and the preservation of genetic material are the major objectives of this recovery plan.

#### Public Comments Solicited

We solicit written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the final plan.

#### Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 16, 1999.

**Nora A. Murdock,**

*Acting State Supervisor.*

[FR Doc. 99–16103 Filed 6–23–99; 8:45 am]

**BILLING CODE 4310–55–M**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### National Wildlife Refuge System Design Symbol

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice serves to designate the ''Blue Goose'' as the official design symbol for the National Wildlife Refuge System. We will use this design symbol on boundary markers for National Wildlife Refuges, and in conjunction with the Service shield, on signs at entrances and exits and on refuge-specific and Refuge System-specific publications. This action accomplishes the official designation of the symbol in current use. The Service Sign Committee and Publication Design Standards Committee are drafting specific guidelines for use of the Blue Goose on entrance and exit signs and on publications.

**DATES:** Effective June 24, 1999.

**FOR FURTHER INFORMATION CONTACT:** Doug Staller; telephone (703) 358–2029; FAX (703) 358–1826; e-mail Doug__Staller@fws.gov.

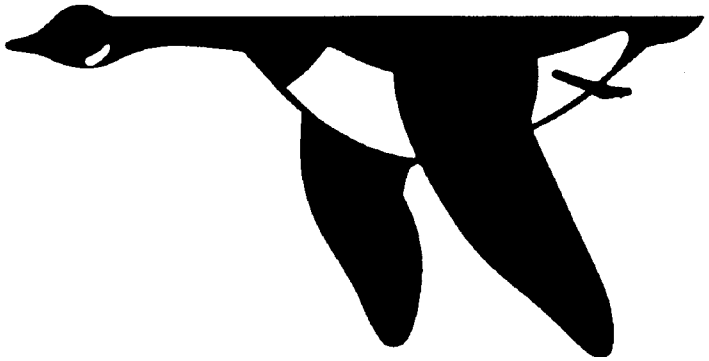
**SUPPLEMENTARY INFORMATION:** We prescribe the ''Blue Goose'' design symbol as the official symbol of the National Wildlife Refuge System, U.S. Fish and Wildlife Service, Department of the Interior. We intend to use, but not limit the use, of this design symbol to indicate boundary markers for the National Wildlife Refuge System, and in conjunction with the Service shield, on signs at entrances and exits and on refuge-specific and Refuge System-specific publications. We use this symbol in a specified blue color.

In making this prescription, we give notice that whoever manufactures, sells or possesses this design symbol, or any colorable imitation thereof, or photographs, prints or in any other manner makes or executes any engraving, photograph or print, or

impression in the likeness of this design symbol, or any colorable imitation thereof without authorization from the Director is subject to the penalty provisions of section 701 of title 18 of the United States Code.

We depict the design symbol for the National Wildlife Refuge System below:

BILLING CODE 4310–55–P



Dated: June 17, 1999.

**Jamie Rappaport Clark,**

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. 99–16127 Filed 6–23–99; 8:45 am]

BILLING CODE 4310–55–C

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AK–962–1410–00–P; AA–8096–03]**

### Alaska Native Claims Selection

In accordance with Departmental regulations 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, (ANCSA), 43 U.S.C. 1601, 1613(e) will be issued to Chugach Alaska Corporation. The land is described as Lot 1, Sec. 32, T. 8 S., R. 3 E., Copper River Meridian, Alaska, containing 360.23 acres.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Anchorage Daily News.* A copy of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, shall have until July 26, 1999 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

**Christine Sitbon,**

*Land Law Examiner, Branch of 962 Adjudication.*

[FR Doc. 99–15633 Filed 6–18–99; 8:45 am]

BILLING CODE 4310–$$–U

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MT–070–99–1990–00]**

### Area Closure to All Unauthorized Public Uses of the Devil's Elbow Recreation Area Located on Hauser Lake, 12 Miles Northeast of Helena, MT

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of immediate area closure to all public uses including motorized travel within the Devil's Elbow Recreation Site while construction work is underway.

**SUMMARY:** Notice is hereby given that effective immediately all public lands and roads within the Devil's Elbow Site are closed to all public uses in portions of:

**Principal Meridian, Montana**

T. 11 N., R. 2 W.,
Secs. 14, 23 and 24;

During construction of this new recreation site. Construction activities include roads, toilets, camping units, parking lots, boat ramp, docks, waterbreak, trails, tables and grills, water, electrical and septic systems, day-use picnic and swimming sites, ramadas and an administration site.

This closure shall remain in effect until completion of Phases I and II of the scheduled construction work which is expected to be completed in July, 2000.

Persons exempt from this closure order include contractors, BLM personnel, inspectors and other individuals escorted by BLM employees.

Reasons for the closure are to provide for the safety of the public, expedite construction work, and protect construction equipment and materials. Authority for this closure is cited under 43 CFR, Subpart 8364.1.

**FOR FURTHER INFORMATION CONTACT:** Merle Good, Field Manager, P.O. Box 3388, Butte, Montana 59702, 406–494–5059.

Dated: June 15, 1999.

**Merle Good,**

*Field Manager.*

[FR Doc. 99–16106 Filed 6–23–99; 8:45 am]

BILLING CODE 4310–DN–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MT–910–0777–26–262F]**

### Notice of Relocation/Change of Address/Office Closure; Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Notice is given that, on July 28, 1999, the Bureau of Land Management's Montana State Office will collocate with the Billings Field Office and move to a new facility.

**EFFECTIVE DATE:** July 28, 1999.

**FOR FURTHER INFORMATION CONTACT:** Janet Singer, Deputy State Director, Division of Support Services 406–255–2742, or Trudie Olson, Supervisory Public Affairs Specialist 406 255–2913, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107.

**SUPPLEMENTARY INFORMATION:** On July 28, 1999, the BLM Montana State Office will relocate to 5001 Southgate Drive, Billings, Montana 59101. This move does not affect the Interagency Fire Center, which will remain located at 1737 Highway 3, Billings, Montana. The following business practices will be in effect from July 12 through August 1, 1999:

(A) The land and mineral records portion of the Information Access Center (Public Room located on second floor) will be closed during the period of July 12 through August 1, 1999. There will be no over-the-counter land transactions or phone business during this interim period. The official records (i.e., case files, plats, etc.) will not be available for public inspection.

Surface Management Edition (SME) maps can be obtained from the Information Access Center July 12 through July 27, 1999. There will be no map sales July 28 through July 30, 1999. Beginning August 2, 1999, map sales will be conducted at the new location, 5001 Southgate Drive, Billings, Montana.

(B) During this interim period, customers are encouraged to conduct official business through the mail, using the following mailing address: P.O. Box 36800, Billings Montana 59107–6800. A drop box will also be made available at the security desk in the lobby at 222 North 32nd Street from July 12 through July 27, 1999. No land or mineral filing transactions will be conducted through the Information Access Center.

(C) Staff persons will be answering the current telephone numbers through noon on July 28, 1999. Between 12:00 noon on July 28, 1999, and 8:00 a.m. on August 2, 1999, emergency calls may be directed to 406–255–2888.

(D) Telephone numbers will change. Effective August 2, 1999, the following numbers will be in place:

(1) General Information—406–896–5000.

(1) Information Access Center—406–896–5004.

(2) Law Enforcement—406–896–5010.

(3) External Affairs—406–896–5011.

(4) State Director's Office—406–896–5012.

(5) Fax Transmittals—406–896–5020 (temporary number).

(E) The post office mailing address will remain the same: P.O. Box 36800, Billings, Montana 59107–6800.

(F) We will resume a full service business on August 2, 1999, at 5001 Southgate Drive, Billings, Montana 59101.

Dated: June 10, 1999.

**Greg A. Bergum,**

*Acting Deputy State Director, Division of Support Services.*

[FR Doc. 99–16104 Filed 6–23–99; 8:45 am]

BILLING CODE 4310–DN–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CA–330–1040–00, CACA 40800]**

### Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification, California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of classification for lease.

**SUMMARY:** The following public land in Humboldt County, California, has been examined and found suitable for classification for lease to the Mattole Salmon Group under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, *et seq.*). The Mattole Salmon Group, a nonprofit corporation, proposes to construct a salmon research and restoration facility on public land along Lighthouse Road.

**Humboldt Base and Meridian**

T.2S., R.2W.,
Section 16, NWSENW.
Containing one-half acre, more or less.

The use is consistent with current BLM land use planning and would be in the public interest as it helps meet the goals set forth in the Memorandum of Understanding between the Mattole Salmon Group and the BLM dated July 11, 1985. Detailed information concerning this action is available for review at the Arcata Field Office, 1695 Heindon Road, Arcata, CA 95521.

Upon publication of this notice in the **Federal Register**, the land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease or classification of the land to Lynda J. Roush, Field Manager, 1695 Heindon Road, Arcata, CA 95521.

**Classification Comments**

Interested parties may submit comments involving the suitability of the land for development. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

**Application Comments**

Interested parties may submit comments regarding the specific proposed action in the application, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for development.

Comments received on the classification will be answered by the State Director with the right to further comment to the Secretary. Comments on the application will be answered by the State Director with the right of appeal to the IBLA.

**Lynda J. Roush,**

*Arcata Field Manager.*

[FR Doc. 99–16067 Filed 6–23–99; 8:45 am]

BILLING CODE 4130–40–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Final General Management Plan/ Environmental Impact Statement, Gettysburg National Military Park, Pennsylvania

**AGENCY:** National Park Service, Department of the Interior

**ACTION:** Availability of final environmental impact statement and general management plan for Gettysburg National Military Park.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of a Final General Management Plan/ Environmental Impact Statement (FGMP/EIS) for Gettysburg National Military Park, Pennsylvania.

**DATES:** A 30-day no-action period will follow the Environmental Protection Agency's notice of availability of the FGMP/EIS.

**ADDRESSES:** Public reading copies of the FGMP/EIS will be available for review at the following locations:

- Office of the Superintendent, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325. (717) 334–1124, ext. 452.
- Department of the Interior Library, Department of the Interior, 18th and C

Streets NW, Washington, DC 20240. (202) 208–6843.

- Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets NW, Washington, DC 20240. (202) 208–6843.
- Chesapeake Systems Office, National Park Service, Park Planning, Natural Resources and Special Projects Office, U.S. Customs House, 200 Chestnut Street, Philadelphia, PA 19106–2878. (215) 597–1669.

**SUPPLEMENTARY INFORMATION:** The FGMP/EIS describes four alternatives for the management of Gettysburg National Military Park, the environment that would be affected by the management prescriptions, and the environmental consequences of implementing those actions. Alternative A continues the existing management direction of the park. Alternative B proposes rehabilitation of large-scale landscape patterns on the 1863 battlefield and in the Soldiers' National Cemetery, the development of a new museum complex, enhanced interpretation and resource management. Alternative C, the proposed plan, proposes the rehabilitation of features significant to the Battle of Gettysburg and to the Soldiers' National Cemetery, a new museum complex, enhanced and expanded interpretation, and enhanced resource management. Alternative D proposes restoration of the 1863 battlefield, the Soldiers' National Cemetery and the commemorative areas of the park, a new museum complex, interpretation using the historic tablets, markers and monuments of the park and enhanced resource management.

The FGMP/EIS in particular evaluates the environmental consequences of the proposed action and the other alternatives on: The historic landscapes of the park; collections and archives; buildings and structures; threatened, endangered and sensitive species; other species; socioeconomics; traffic, parking and transit; and park operations.

**FOR FURTHER INFORMATION CONTACT:** Superintendent, Gettysburg NMP, at the above address and telephone number.

Dated: June 18, 1999.

**John A. Latschar,**

*Superintendent, Gettysburg NMP.*

[FR Doc. 99–16137 Filed 6–23–99; 8:45 am]

**BILLING CODE 4310–70–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Bay-Delta Advisory Council's Ecosystem Roundtable Meeting

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The Bay-Delta Advisory Council's (BDAC) Ecosystem Roundtable will meet on July 6, 1999, to continue discussion on funding recommendations for 1999. This meeting is open to the public. Interested persons may make oral statements to the Ecosystem Roundtable or may file written statements for consideration.

**DATES:** The Bay-Delta Advisory Council's Ecosystem Roundtable meeting will be held from 9:30 a.m. to 12:00 noon on Tuesday, July 6, 1999.

**ADDRESSES:** The Ecosystem Roundtable will meet at the Resources Building, Room 1412, 1416 Ninth Street, Sacramento, CA 95814.

**FOR FURTHER INFORMATION CONTACT:** Wendy Halverson Martin, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

**SUPPLEMENTARY INFORMATION:** The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA). The BDAC provides advice to CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: June 18, 1999.

**Kirk Rodgers,**

*Acting Regional Director, Mid-Pacific Region.*

[FR Doc. 99–16068 Filed 6–23–99; 8:45 am]

**BILLING CODE 4310–94–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant To the Comprehensive Environmental Response, Compensation and Liability Act and Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on June 11, 1999 a proposed Consent Decree in *United States* v. *Abitibi Price Corporation, et al.*, Civil Action No. 1:99CV428, was lodged with the United States District Court for the Western District of Michigan.

The Consent Decree resolves certain claims of the United States against 43 companies under Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a) and Section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. § 6973 at the former Organic Chemical, Inc. facility (''the Site'') in Grandville, Kent County, Michigan. The defendants have been

named as companies which arranged for disposal or treatment of hazardous substances at the Site.

The settlement requires the settling defendants to make payment of $3,300,000 for past response costs incurred by the U.S. Environmental Protection Agency in connection with the Site and for certain of the settling defendants to perform the groundwater component of EPA's selected second phase or Operable Unit for the Site's remediation.

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, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044–7611, and should refer to *United States* v. *Abitibi Price Corporation, et al.,* Civil Action No. 1:99CV428, and the Department of Justice Reference No. 90–11–3–990/1. Commenters may request an opportunity for a public hearing in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. § 6973(d), by contacting Jerome Kujawa (EPA Region 5) at (312) 886–6731. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Western District of Michigan, 330 Ionia Avenue, NW, Suite 501, Grand Rapids, Michigan 49503; the Region 5 Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, telephone no. (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please refer to DJ #90–11–3–990/1, and enclose a check in the amount of $57.25 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 99–16118 Filed 6–23–99; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree

In accordance with Departmental policy and 28 CFR 50.7, please be advised that a proposed Partial Consent Decree (''Decree'') was lodged on June 16, 1999, in *United States* v. *Absolute Enterprises, Inc., et al.,* C.A. No. WMN–97–2469, with the United States District Court for the District of Maryland. The Decree resolves litigation brought by the United States under Section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), for alleged violations of the National Emissions Standard for Hazardous Air Pollutants (''NESHAP'') regulating emissions of asbestos particles.

Under the Consent Decree, Defendant the State of Maryland Department of General Services (''DGS'') will undertake an extensive program to eliminate violations of the asbestos NESHAP, and will pay a civil penalty of $20,000. DGS will require that its asbestos abatement and industrial hygiene contractors comply with the NESHAP and will implement detailed procedures for, among other things, inspecting DGS sites where asbestos is being removed, investigating contractors to determine their records as to NESHAP compliance, training workers at such sites, and performing supervisory oversight at such sites.

Any comments on the proposed Decree should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Absolute Enterprises, Inc., et al.,* DOJ Ref. #90–5–2–1–1983. The proposed Consent Decree may be examined at the office of the United States Attorney, District of Maryland, U.S. Courthouse, Room 604, 101 W. Lombard Street, Baltimore, Maryland 21201, and the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. The proposed Consent Decree contains 43 pages, including attachments. To obtain the Consent Decree enclose a check for $10.75. Please make the check payable to the Consent Decree Library, and refer to the case by its title and DOJ Ref. #90–5–2–1–1983.

**Joel Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc 99–16114 Filed 6–23–99; 8:45 am]

**BILLING CODE 4110–15–M**

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on June 11, 1999, a proposed Consent Decree (''Decree'') in *United States* v. *Atlantic Richfield Company,* Civil No. 2:95 CV 698S, was lodged with the United States District Court for the District of Utah. The United States filed this action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9601, *et seq.,* to recover the past response costs incurred at or in connection with the Bingham Creek Channel Superfund Site (the ''Site'') southwest of Salt Lake City, Utah.

The Decree resolves claims against Atlantic Richfield Company (''ARCO'') under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, as well as Section 7003 of RCRA, 42 U.S.C. 6973, with respect to the Site as specifically defined in the Decree. ARCO will perform certain operation and maintenance activities associated with the so-called Copperton Tailings Property and a portion of the Bingham Creek Channel with respect to work ARCO previously completed in response to various administrative orders issued by the U.S. Environmental Protection Agency. Contribution and other potential claims of ARCO against the United States are also resolved.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to, *United States* v. *Atlantic Richfield Company,* Civil No. Civil No. 2:95 CV 698S, and D.J. Ref. # 90–11–2–1065. Commenters may request an opportunity for a public hearing in the affected area, in accordance with Section 7003(d) of RCRA.

The Decree may be examined at the office of the U.S. Attorney for the District of Utah, 185 South State Street, Suite 400, Salt Lake City, UT 84111, at the U.S. EPA Region VIII, 999 18th Street, Superfund Records Center, Suite 500, Denver, CO 80202, and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor,

Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $7.75 for the Decree (25 cents per page reproduction cost) payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 99–16113 Filed 6–23–99; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the National Marine Sanctuaries Act

In accordance with Department policy, 28 CFR § 50.7, notice is hereby given that a proposed Consent Decree in *United States and Board of Trustees of the Internal Trust Fund of the State of Florida* v. *Atlas Shipping, Ltd. and Transportacion Maritima Mexicana S.A. de C.V.* (S.D. Fla.), was lodged with the United States District Court for the Southern District of Florida on June 4, 1999 (Case No. 99–10061). The proposed Consent Decree resolves the claims of the United States and the State of Florida against Atlas Shipping, Ltd. and Transportacion Maritima Mexicana S.A. de C.V. pursuant to Section 1443 of the National Marine Sanctuaries Act, 16 U.S.C. § 1431 *et seq.,* and Florida Statutes § 253.04 for response costs and damages arising out of the grounding of the Contship Houston in the Florida Keys National Marine Sanctuary on February 2, 1997. Defendants have previously undertaken restoration activities to repair injured Sanctuary resources and have partially reimbursed the plaintiffs for response costs. Under the Consent Decree, defendants will pay the United States $1,512,531 in reimbursement for past response costs and for future long term monitoring of the restoration. The defendants will pay the State of Florida $3334 in reimbursement of past response costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed settlement agreement. 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, D.C. 20044; and refer to *United States and Board of Trustees of the Internal Trust Fund of the State of Florida* v. *Atlas Shipping, Ltd. and Transportacion Maritima Mexicana S.A. de C.V.,* DOJ # 90–5–1–1–4534.

The proposed settlement agreement may be examined at the Office of the United States Attorney, Southern District of Florida, 99 N.E. 4th Street, Miami, Florida 33132 and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 99–16107 Filed 6–23–99; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Oil Pollution Act and the National Park Service Resource Protection Act

Notice is hereby given that the United States, on behalf of the United States Departments of Commerce and Interior, and the State of Hawaii, lodged a proposed Consent Decree in the United States District Court for the District of Hawaii, in *United States* v. *Chevron Products Division*, Civil Action No. 99–00410–DAE–LEK, on June 3, 1999. This Consent Decree resolves the claims of the United States and the State of Hawaii against Chevron Products Division (''Chevron''), pursuant to the Oil Pollution Act, 33 U.S.C. 2701, *et seq.*, the National Park System Resource Protection Act, 16 U.S.C. 19jj, as well as, state laws and regulations. The consent decree concerns Chevron's discharge of approximately 41,000 gallons of number 6 bunker fuel oil from its pipeline on the island of Oahu, Hawaii, into Waiau Marsh, Waiau Stream, and Pearl Harbor on May 14, 1996.

The Consent Decree provides that Chevron will pay a $100,000 penalty to the State of Hawaii and will pay approximately $2.250 million in natural resource damages and restoration projects. As part of the Consent Decree, Chevron has agreed to undertake at the *USS ARIZONA* Memorial Visitors Center in Pearl Harbor, Hawaii. The cost of this work is valued at approximately $1 million. The consent decree further provides for the payment of interest from the date of lodging the decree.

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, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Chevron Products Division*. DOJ #90–5–1–1–4426.

The proposed Consent Decree may be examined at the following offices: United States Attorney, District of Hawaii, Suite 6100, 300 Ala Moana Boulevard, Honolulu, Hawaii 96850, and at the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting a copy, please refer to the reference number given above and enclose a check in the amount of $5.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Walker B. Smith,**

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 99–16116 Filed 6–23–99; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act (''RCRA'')

Consistent with the policy set forth in the Department of Justice regulations at 28 C.F.R. 50.7, notice is hereby given that on June 11, 1999, a proposed Consent Decree was lodged with the United States District Court for the Southern District of Indiana, Indianapolis Division, in *United States of America* v. *GK Technologies, Inc. and Indiana Steel & Wire Co.* Cause No. IP 90–2122–C–D/G. The proposed Consent Decree settles claims asserted by the United States, on behalf of the United States Environmental Protection Agency, pursuant to Section 3008 of the Resource Conservation and Recovery Act, 42 U.S.C. 6928, against GK Technologies, Inc. (''GK''), involving a wire manufacturing facility formerly operated by Indiana Steel & Wire Co. (''IS&W'') on land owned by GK Technologies in Muncie, Indiana.

The Consent Decree requires GK to complete certain environmental investigations and to implement workplans for remediation of the facility upon approval by the Indiana Department of Environmental Management's (''IDEM'') Voluntary Remediation Program (''VRP''). Under the proposed decree, the U.S. Environmental Protection Agency will review and have an opportunity to comment on the investigatory reports

and proposed workplans submitted to the IDEM VRP. IS&W is not a party to the proposed consent decree; however, the United States reserves its rights with respect to IS&W and the current operator of the facility.

The Department of Justice will receive written comments relating to the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Comments should be directed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *GK Technologies, Inc. and IS&W Co.*, DOJ Reference # 90–7–1–407A.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Indiana, U.S. Courthouse, 5th Floor, 46 East Ohio Street, Indianapolis, Indiana 46204, at the Office of the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or my mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $15.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

**Bruce S. Gelber,**

*Deputy Chief, Environmental Enforcement Section.*

[FR Doc. 99–16111 Filed 6–23–99; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Safe Drinking Water Act 40 U.S.C. 300(f), et seq.

Notice is hereby given that on May 17, 1999 a proposed Consent Decree (''Decree'') in *United States* v. *HF Bar Ranch*, Civil Action No. 98 CV 158J, was lodged with the United States District Court for the District of Wyoming. The United States filed this action pursuant to Section 1414(b) and (g) of the Safe Drinking Water Act, 42 U.S.C. 300g–3(b) and (g), seeking injunctive relief and civil penalties for the Defendant's violations of the Safe Drinking Water Act and EPA's National Primary Drinking Water regulations at its guest Ranch located in Saddlestring, Wyoming.

The proposed Consent Decree requires the Defendants to pay a civil penalty of $15,000 for its violations of the Act. Subsequent to the filing of the Complaint, the HF Bar Branch came into compliance with the Safe Drinking Water Act and EPA's implementing regulations, making additional injunctive relief unnecessary.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice Washington, DC 20530, and should refer to, *United States* v. *HF Bar Ranch*, Civil Action No. 98 CV 158J, and D.J. Ref. #90–5–1–1–4398.

The Decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Denver Field Office, 999 18th Street, North Tower Suite 945, Denver, Colorado 80202 and the U.S. EPA Region VIII, 999 18th Street, and at the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $10 for the Decree (25 cents per page reproduction cost) payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 99–16108 Filed 6–23–99; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decrees Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on June 10, 1999 a proposed consent decree in *United States* v. *Horsehead Industries, Inc.*, Civil Action No. CV. 98–654, was lodged with the United States District Court for the Middle District of Pennsylvania.

In this action, the United States is seeking more than $12 million in past costs and future costs, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, in connection with the Palmerton Zinc Pile Superfund Site (''Site''), located in Palmerton, Carbon County, Pennsylvania.

The consent decree that was lodged would resolve the United States' claims against 197 parties who transported materials to the Site and whom the United States alleges are de minimis generators. Those parties will pay approximately $4.7 million, in the aggregate, to resolve their claims. The consent decree will not resolve the United States' claims against four other defendants who are current or former owners and operators of the Site.

The consent decree includes a covenant not to sue by the United States under Sections 106 and 107 of CERCLA, 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 of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Horsehead Industries, Inc.*, D.J. Ref. 90–11–2–271M. Commenters may request an opportunity for a public hearing in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed consent decree may be examined at the Office of the United States Attorney, Federal Courthouse Building, 228 Walnut Street, Harrisburg, PA 17108; at U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $57.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 99–16115 Filed 6–23–99; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 to 9675

Notice is hereby given that a proposed consent decree in the case of *United States* v. *Indiana Department of Correction, et al.*, Civil Action No. 3:99CV0336RM, was lodged on June 11, 1999 with the United States District Court for the Northern District of

Indiana, South Bend Division. The proposed consent decree resolves the United States' claims against defendants for natural resource damages resulting from operation and remediation of the Waste, Inc. Superfund Site located in Michigan City, LaPorte County, Indiana, for a total payment of $603,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Indiana Department of Correction, et al.*, DOJ Ref. No. 90–11–3–1376/4.

The proposed consent decree may be examined at the office of the United States Attorney, 204 South Main Street, South Bend, Indiana 46601–2191; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 99–16117 Filed 6–23–99; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on June 11, 1999, a proposed Consent Decree (''Decree'') in *United States* v. *Kennecott Holdings Corporation et al.*, Civil No. 2:99CV0437K, was lodged with the United States District Court for the District of Utah. The United States filed this action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9601, *et seq.*, to recover the past response costs incurred at or in connection with the Bingham Creek Channel Superfund Site southwest of Salt Lake City, Utah.

The proposed Consent Decree resolves claims against Holdings Corporation, formerly Kennecott Corporation, and Utah Copper Company (''Kennecott'') under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and Section 7003 of RCRA, 42 U.S.C. 9673, with respect to the Site as specifically defined in the Decree. Under the terms of the Decree the United States will recover response costs in the amount of $265,000. Contribution and other potential claims of Kennecott against the United States are also resolved.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comment should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to, *United States* v. *Kennecott Holdings Corporation*, Civil No. 2:99CV0437K, and D.H. Ref. # 90–11–2–1065. If requested, the United States will conduct a public meeting in the vicinity of West Jordan, Utah.

The Decree may be examined at the office of the U.S. Attorney for the District of Utah, 185 South State Street, Suite 400, Salt Lake City, UT 84111, at the U.S. EPA Region VIII, 999 18th Street, Superfund Records Center, Suite 500, Denver, CO 80202, and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $8.50 for the Decree (25 cents per page reproduction cost) payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 99–16112 Filed 6–23–99; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, 38 Fed. Reg. 19029, notice is hereby given that a proposed Consent Decree in *United States and State of New York* v. *Onondaga County*, Civil Action Number 91 Civ. 477 (HGM), was lodged with the United States District Court for the Northern District of New York on June 9, 1999.

In this action, the United States and State sought injunctive relief and penalties from defendants, Onondaga County, New York and the Commissioner of Onondaga County Department of Drainage and Sanitation, for violations of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the County's State Pollutant Discharge Elimination System (''SPDES'') permits. Under the Consent Decree, the County is required to conduct a broad EPA approved pre-treatment compliance program and must fully implement and enforce the provisions of the Pretreatment Program in SPDES permits. The County must also pay a penalty of $624,000 and perform a nonpoint source Supplemental Environmental Project to reduce pollutants into the Onondaga Lake drainage area valued at $750,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States and State of New York* v. *Onondaga County*, D.J. Ref. 90–5–1–1–3597.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Northern District of New Jersey, 100 South Clinton Street, 9th Floor, Syracuse, New York, at U.S. EPA, Region II, 290 Broadway, New York, New York (contact Diane Gomes at (212) 637–3235), and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the Consent Decree may be obtained in person of by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC. 20005. In requesting a copy, please enclose a check in the amount of $14.00 (25 cents per page reproduction costs) payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section.*

[FR Doc. 99–16110 Filed 6–23–99; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Pursuant to Section 122(d)(2) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7, notice is hereby given that

on June 3, 1999, a proposed Consent Decree in *United States* v. *Robert Bosch Corporation,* Civil Action No. 1:99–CV–414, was lodged with the United States District Court for the Western District of Michigan for a period of thirty day to facilitate public comment.

The settlement embodied in the proposed Consent Decree requires Bosch, the only settling party, to reimburse the Environmental Protection Agency (''EPA'') all unreimbursed costs associated with, and to perform the remedy selected by EPA for, the Bosch/Bendix Braking Superfund Site located in St. Joseph, Michigan. The remedial action to be performed by Bosch will include soil vapor extraction, natural attenuation of contaminated groundwater together with monitoring of groundwater and a contingent groundwater remediation plan if contamination exceeds defined triggers, and deed restrictions and other institutional controls to assure that contaminated groundwater will not be used as drinking water.

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 of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Robert Bosch Corporation* D.J. Ref. No. 90–11–2–06028.

The Consent Decree may be examined at the Office of the United States Attorney, Western District of Michigan, 3300 Ionia Avenue, Grand Rapids, Michigan 49503, at the Region 5 Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604–3590, and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please refer to the above-referenced case and enclose a check in the amount of $23.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 99–16109 Filed 6–23–99; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

**[AAG/Order No. 168–99]**

### Privacy Act of 1974; Notice of the Removal of a System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Immigration and Naturalization Service (INS), Department of Justice is removing a published Privacy Act system of records entitled: ''Position Accounting/Control System (PACS), JUSTICE/INS–003'' (JUSTICE/INS–003 was most recently published on March 10, 1992 (57 FR 8483).)

JUSTICE/INS–003 is being removed because PACS duplicates JUSTICE/JMD–003, ''Department of Justice Payroll System.'' (JUSTICE/JMB–003 was most recently published on April 13, 1999 (64 FR 18054).)

Therefore, the ''PACS,'' is removed from the Department's compilation of Privacy Act systems.

Dated: June 10, 1999.

**Stephen R. Colgate,**

*Assistant Attorney General for Administration.*

[FR Doc. 99–16119 Filed 6–23–99; 8:45 am]

BILLING CODE 4410–CJ–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### United States v. Motorola, Inc. and Nextel Communications, Inc.

Notice is hereby given that Nextel Communications, Inc. (''Nextel'') has moved to modify the Final Judgment entered by this Court on July 25, 1995. In a stipulation filed with the Court, the Department of Justice (''Department'') has tentatively consented to modification of the Judgment, but has reserved the right to withdraw its consent pending receipt of public comments. On October 27, 1994, the United States filed a civil antitrust complaint, *United States* v. *Motorola, Inc. & Nextel Communications, Inc.,* Civil No. 1:94CV02331 (TFH) (D.D.C.), seeking to enjoin a proposed transaction between Nextel and Motorola which, it alleged, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. Nextel, then the nation's largest provider of specialized mobile radio(''SMR''), or dispatch services, had agreed to acquire most of Motorola's dispatch business. The complaint alleged that the Nextel/Motorola transaction was likely to reduce competition substantially in fifteen (15) major cities in the United States in the market for trunked SMR services.

The Final Judgment, filed contemporaneously with the complaint and entered by the Court on July 25, 1995, after review pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), contained three provisions designed to remedy the anticompetitive effects of the transaction: (1) Nextel and Motorola were required to divest themselves of substantially all of their SMR channels in the 900 MHZ radio band and to release, upon request of the license holders, substantially all the 900 MHZ SMR channels they managed in a number of large cities; (2) Nextel and Motorola, jointly, were prohibited from holding or acquiring more than thirty (30) 900 MHZ channels in Boston, Chicago, Dallas, Houston, Los Angeles, San Francisco, Miami,Orlando, New York, Philadelphia, Denver, and Washington, DC (the ''Category A Cities''), and ten (10) 900 MHZ channels in Detroit and Seattle (the ''Category B Cities''); and (3) Nextel and Motorola were required to sell 42 800 MHZ channels to an independent service provider in Atlanta, Georgia. These provisions were specifically designed to preserve competition for trunked SMR customers by limiting for ten years the 900 MHZ spectrum Nextel and Motorola would own and control and by ensuring that there would be sufficient 900 MHZ capacity to permit the entry of new trunked SMR service providers.

Many of the 900 MHZ channels divested pursuant to the Final Judgment were acquired by Geotek Communications, Inc. (''Geotek''), which acquired additional 900 MHZ channels and used the spectrum to offer dispatch services in competition with Nextel. However, Geotek's efforts to enter the dispatch market ultimately failed, and its sizable blocks of the 900 MHz licenses in metropolitan areas nationwide will be available for use by some other firm.

On February 16, 1999, Nextel filed a Motion to Vacate Consent Decree, a motion which, if granted, would have allowed Nextel to acquire the Geotek licenses, as well as additional 900 MHZ spectrum. The United States opposed Nextel's request for immediate termination of the decree. The Court scheduled an evidentiary hearing on Nextel's motion to vacate the decree to begin on June 14, 1999. Thereafter, on the eve of that hearing, the United States and Nextel reached agreement on the terms of a proposed modification of the Final Judgment, and signed a Stipulation reflecting that agreement, as well as their agreement that proceedings in connection with Nextel's motion to vacate the decree should be stayed

pending final resolution of the motion for proposed modification of the decree.

The terms of the proposed modification would (1) prohibit Nextel from acquiring Geotek's 900 MHZ licenses in the Category A and B Cities; (2) increase the limits on Nextel's and Motorola's 900 MHZ channels, to permit them to hold or acquire up to one hundred eight (108) 900 MHZ channels in the Category A Cities, and fifty-four (54) 900 MHZ channels in the Category B Cities; and (3) terminate the Modified Final Judgment on October 30, 2000. Finally, the proposed modification would vacate the provision of the Final Judgment that alters the standard of review for modification as of July 25, 2000.

The Department and Nextel have filed memoranda with the Court setting forth the reasons why they believe that modification of the Final Judgment would serve the public interest. Copies of Nextel's motion to modify, the stipulation containing the Department's consent, the supporting memoranda, and all additional papers filed with the Court in connection with this motion will be available for inspection at the Antitrust Documents Group of the Antitrust Division, U.S. Department of Justice, Room 215, Liberty Place Building, 325 7th Street, N.W., Washington, D.C. 20004, and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the duplicating fee determined by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the Judgment to the Department. Such comments must be received by the Antitrust Division within thirty (30) days. The Department will publish in the **Federal Register** and file with the Court any comments and responses thereto. Comments should be addressed to Donald J. Russell, Chief, Telecommunications Task Force, Antitrust Division, U.S. Department of Justice, 1401 H Street, N.W., Suite 8000, Washington, D.C. 20005, telephone (202) 514–6381.

**Constance K. Robinson,**

*Director of Operations and Merger Enforcement.*

[FR Doc. 99–16120 Filed 6–23–99; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

June 18, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Department Clearance Officer, Ira Mills (202) 219–5096 ext. 143) or by E-mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Bureau of Labor Statistics.

*Title:* Current Population Survey (CPS) Basic Labor Force.

*OMB Number:* 1220–0100.

*Frequency:* Monthly.

*Affected Public:* Individuals or households.

*Number of Respondents:* 48,000.

*Estimated Time Per Respondent:* 84 minutes annually.

*Total Burden Hours:* 67,200 hours.

*Total Annualized capital/startup costs:* $0.

*Total annual costs (operating/maintaining systems or purchasing services):* $0.

*Description:* The labor force data collected in the CPS help to determine the employment situation of specific population groups as well as general trends in employment and unemployment.

**Ira Mills,**

*Departmental Clearance Officer.*

[FR Doc. 99–16071 Filed 6–23–99; 8:45 am]

**BILLING CODE 4510–24–M**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. NRTL–4–93]**

### Underwriters Laboratories Inc., Expansion of Recognition

**AGENCY:** Occupational Safety and Health Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** This notice announces the Agency's final decision on the application of Underwriters Laboratory Inc. (UL), for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

**EFFECTIVE DATE:** This recognition becomes effective on June 24, 1999 and, unless modified in accordance with 29 CFR 1910.7, continues in effect while UL remains recognized by OSHA as an NRTL.

**FOR FURTHER INFORMATION CONTACT:** Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, DC 20210, or phone (202) 693–2110.

**SUPPLEMENTARY INFORMATION:**

### Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the expansion of recognition of Underwriters Laboratories Inc. (UL) as a Nationally Recognized Testing Laboratory (NRTL). UL's expansion covers the use of additional test standards. OSHA recognizes an organization as an NRTL and processes applications related to such recognitions following requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Appendix A to this section requires that OSHA publish this public notice of its final decision on an application.

UL submitted a request, dated February 5, 1996 (see Exhibit 13A), to expand its recognition to use additional test standards. UL then supplemented its request on April 1, 1997 (see Exhibit 13B), for additional test standards. OSHA published the required notice in the **Federal Register** (62 FR 62359, 11/21/97). The notice included a preliminary finding that UL could meet the requirements for expansion of its recognition, and OSHA invited public comment on the application by January 20, 1998. One comment was received, within the time provided, in response to the notice (see Exhibit 15–1). UL responded to this comment in its letter dated December 22, 1998 (see Exhibit 16).

The submitter of the comment expressed five ''concerns,'' and posed a number of questions related to them. Most of the concerns relate to an alleged deficiency in the UL 2161 (Neon Transformers and Power Supplies) test standard. The NRTL Program staff has carefully considered these concerns but has concluded that the comment provides no basis for withholding approval of this test standard for UL or for any other NRTL that has the necessary capabilities.

UL's previous application as an NRTL covered its renewal of recognition (60 FR 16171, 3/29/95), which OSHA granted on 6/29/95 (60 FR 33852).

You may obtain or review copies of all public documents pertaining to the application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2625, Washington, DC 20210, telephone: (202) 693–2350. You should refer to Docket No. NRTL–4–93, the permanent record of public information on the UL recognition.

The current addresses of the testing facilities (sites) that OSHA recognizes for UL are:

Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, Illinois 60062

Underwriters Laboratories Inc., 1285 Walt Whitman Road, Melville, Long Island, New York 11747

Underwriters Laboratories Inc., 1655 Scott Boulevard, Santa Clara, California 95050

Underwriters Laboratories Inc., 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, North Carolina 27709

Underwriters Laboratories Inc., 2600 NW Lake Road, Camas, Washington 98607

UL International Limited, Veristrong Industrial Centre, Block B, 14th Floor, 34 Au Pui Wan Street, Fo Tan Sha Tin, New Territories, Hong Kong

UL International Services, Ltd., Taiwan Branch, 4th Floor, 260 Da-Yeh Road, Pei Tou District, Taipei, Taiwan

**Final Decision and Order**

The NRTL Program staff has examined the application and other pertinent information, and the assessment staff recommended, in a memo dated August 19, 1997 (see Exhibit 14), expansion of UL's recognition to include the additional test standards. Based upon this examination and recommendation, OSHA finds that UL has met the requirements of 29 CFR 1910.7 for expansion of its recognition to use an additional 174 test standards, subject to the limitations and conditions listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of UL, subject to these limitations and conditions. As is the case for any NRTL, UL's recognition is further limited to equipment or materials (products) for which OSHA standards require third party testing and certification before use in the workplace.

*Limitations*

OSHA hereby expands the recognition of UL for testing and certification of products to demonstrate compliance to the following 174 standards. OSHA has determined that each standard meets the requirements for an appropriate test standard prescribed in 29 CFR 1910.7(c).

[1] ANSI/IEEE C37.013 AC High-Voltage Generator Circuit Breakers Rated on a Symmetrical Current Basis
[1] ANSI/IEEE C37.13 Low Voltage AC Power Circuit Breakers Used in Enclosures
[1] ANSI/IEEE C37.14 Low Voltage DC Power Circuit Breakers Used in Enclosures
[1] ANSI C37.17 Trip Devices for AC and General Purpose DC Low-Voltage Power Circuit Breakers
[1] ANSI/IEEE C37.18 Enclosed Field Discharge Circuit Breakers for Rotating Electric Machinery
[1] ANSI/IEEE C37.20.1 Metal-Enclosed Low-Voltage Power Circuit Breaker Switchgear
[1] ANSI/IEEE C37.20.2 Metal-Clad and Station-Type Cubicle Switchgear
[1] ANSI/IEEE C37.20.3 Metal-Enclosed Interrupter Switchgear
[1] ANSI/IEEE C37.21 Control Switchboards
[1] ANSI/IEEE C37.29 Low-Voltage AC Power Circuit Protectors Used in Enclosures
[1] ANSI/IEEE C37.38 Gas-Insulated, Metal-Enclosed Disconnecting, Interrupter and Grounding Switches
[1] ANSI C37.42 Distribution Cutouts and Fuse Links
[1] ANSI C37.44 Distribution Oil Cutouts and Fuse Links
[1] ANSI C37.45 Distribution Enclosed Single-Pole Air Switches
[1] ANSI C37.46 Power Fuses and Fuse Disconnecting Switches
[1] ANSI C37.47 Distribution Fuse Disconnecting Switches, Fuse Supports, and Current-Limiting Fuses
[1] ANSI C37.50 Low-Voltage AC Power Circuit Breakers Used in Enclosures—Test Procedures
[1] ANSI C37.51 Metal-Enclosed Low-Voltage AC Power Circuit-Breaker Switchgear Assemblies—Conformance Test Procedures
[1] ANSI C37.52 Low-Voltage AC Power Circuit Protectors Used in Enclosures—Test Procedures
[1] ANSI C37.53.1 High-Voltage Current Motor-Starter Fuses—Conformance Test Procedures
[1] ANSI C37.54 Indoor Alternating-Current High Voltage Circuit Breakers Applied as Removable Elements in Metal-Enclosed Switchgear Assemblies-Conformance Test Procedures
[1] ANSI C37.55 Metal-Clad Switchgear Assemblies—Conformance Test Procedures
[1] ANSI C37.57 Metal-Enclosed Interrupter Switchgear Assemblies—Conformance Testing
[1] ANSI C37.58 Indoor AC Medium-Voltage Switches for Use in Metal-Enclosed Switchgear—Conformance Test Procedures
[1] ANSI/IEEE C37.60 Overhead, Pad-Mounted, Dry-Vault, and Submersible Automatic Circuit Reclosers and Fault Interrupters for AC Systems
[1] ANSI/IEEE C37.66 Oil-Filled Capacitor Switches for Alternating-Current Systems—Requirements
[1] ANSI/IEEE C37.71 Three Phase, Manually Operated Subsurface Load Interrupting Switches for Alternating-Current Systems
[1] ANSI C37.72 Manually-Operated Dead-Front, Pad-Mounted Switchgear with Load-Interrupting Switches and Separable Connectors for Alternating-Current System
[1] ANSI/IEEE C37.90 Relays and Relay Systems Associated with Electric Power Apparatus
[1] ANSI C37.121 Unit Substations—Requirements
[1] ANSI/IEEE C37.122 Gas-Insulated Substations
[1] ANSI/IEEE C57.12.00 Distribution, Power and Regulating Transformers—General Requirements
[1] ANSI C57.12.13 Liquid-Filled Transformers Used in Unit Installations including Unit Substations—Conformance Requirements
[1] ANSI C57.12.20 Overhead-Type Distribution Transformers, 500 kVA and Smaller
[1] ANSI C57.12.21 Pad-Mounted Compartmental-Type Self-Cooled Single-Phase Distribution Transformers with High Voltage Bushings; 167 kVA and Smaller
[1] ANSI C57.12.22 Pad-Mounted Compartmental-Type, Self-Cooled, Three-Phase Distribution Transformers with High Voltage Bushings; 2500 kVA and Smaller
[1] ANSI C57.12.23 Underground-Type Self-Cooled, Single-Phase Distribution Transformers with Separable Insulated High-Voltage Connectors; 167 kVA and Smaller
[1] ANSI C57.12.24 Underground-Type Three-Phase Distribution Transformers, 2500 kVA and Smaller

[1] ANSI C57.12.25 Pad-Mounted Compartmental-Type Self-Cooled Single-Phase Distribution Transformers with Separable Insulated High-Voltage Connectors; 167 kVA and Smaller
[1] ANSI C57.12.26 Pad-Mounted Compartmental-Type, Self-Cooled, Three-Phase Distribution Transformers for use with Separable Insulated High-Voltage Connectors; 2500 kVA and Smaller
[1] ANSI C57.12.27 Liquid-Filled Distribution Transformers Used in Pad-Mounted Installations, Including Unit Substations—Conformance Requirements
[1] ANSI C57.12.28 Switchgear and Transformers—Pad-Mounted Equipment—Enclosure Integrity
[1] ANSI C57.12.40 Three Phase Secondary Network Transformers, Subway and Vault Types (Liquid Immersed); 2500 kVA and Smaller
[1] ANSI C57.12.50 Ventilated Dry-Type Distribution Transformers, 1 to 500 kVA, Single-Phase; and 15 to 500 kVA, Three Phase
[1] ANSI C57.12.51 Ventilated Dry-Type Power Transformers 501 kVA and Larger, Three-Phase
[1] ANSI C57.12.52 Sealed Dry-Type Power Transformers, 501 kVA and Larger, Three-Phase
[1] ANSI C57.12.55 Dry-Type Transformers in Unit Installations, Including Unit Substations—Conformance Requirements
[1] ANSI C57.12.57 Ventilated Dry-Type Network Transformers 2500 kVA and Below, Three-Phase
[1] ANSI/IEEE C57.13 Instrument Transformers—Requirements
[1] ANSI/IEEE C57.13.2 Instrument Transformers—Conformance Test Procedures
[1] ANSI/IEEE C57.15 Step-Voltage and Induction-Voltage Regulators
[1] ANSI/IEEE C57.21 Shunt Reactors Over 500 kVA
[1] ANSI/IEEE C62.1 Gapped Silicon-Carbide Surge Arresters for AC Power Circuits
[1] ANSI/IEEE C62.11 Metal Oxide Surge Arresters for AC Power Circuits
ANSI K61.1 Storage and Handling of Anhydrous Ammonia (CGA G–2.1)
ANSI/NEMA 250 Enclosures for Electrical Equipment
ANSI Z21.24 Metal Connectors for Gas Appliances
ANSI Z21.50 Vented Decorative Gas Appliances
ANSI Z21.57 Recreational Vehicle Cooking Gas Appliances
ANSI Z21.60 Decorative Gas Appliances for Installation in Vented Fireplaces
ANSI Z21.70 Earthquake Actuated Automatic Gas Shutoff Systems
ANSI Z83.7 Gas-Fired Construction Heater
UL 5A Nonmetallic Surface Raceways and Fittings
UL 5B Strut-Type Channel Raceways and Fittings
UL 201 Standard for Garage Equipment
UL 218 Fire Pump Controllers
ANSI/UL 231 Electrical Power Outlets
ANSI/UL 234 Low Voltage Lighting Fixtures for Use in Recreational Vehicles
ANSI/UL 248–1 Low-Voltage Fuses—Part 1: General Requirements
UL 248–2 Low-Voltage Fuses—Part 2: Class C Fuses
UL 248–3 Low-Voltage Fuses—Part 3: Class CA and CB Fuses
ANSI/UL 248–4 Low-Voltage Fuses—Part 4: Class CC Fuses
UL 248–5 Low-Voltage Fuses—Part 5: Class G Fuses
UL 248–6 Low-Voltage Fuses—Part 6: Class H Non-Renewable Fuses
UL 248–7 Low-Voltage Fuses—Part 7: Class H Renewable Fuses
ANSI/UL 248–8 Low-Voltage Fuses—Part 8: Class J Fuses
UL 248–9 Low-Voltage Fuses—Part 9: Class K Fuses
ANSI/UL 248–10 Low-Voltage Fuses—Part 10: Class L Fuses
UL 248–11 Low-Voltage Fuses—Part 11: Plug Fuses
ANSI/UL 248–12 Low-Voltage Fuses—Part 12: Class R Fuses
UL 248–13 Low-Voltage Fuses—Part 13: Semiconductor Fuses
ANSI/UL 248–14 Low-Voltage Fuses—Part 14: Supplemental Fuses
ANSI/UL 248–15 Low-Voltage Fuses—Part 15: Class T Fuses
UL 248–16 Low-Voltage Fuses—Part 16: Test Limiters
ANSI/UL 252A Compressed Gas Regulator Accessories
UL 300 Fire Testing of Fire Extinguishing Systems for Protection of Restaurant Cooking Areas
UL 307B Gas Burning Heating Appliances for Manufactured Homes and Recreational Vehicles
ANSI/UL 391 Solid-Fuel and Combination-Fuel Control and Supplementary Furnaces
UL 508C Power Conversion Equipment
ANSI/UL 583 Electric-Battery-Powered Industrial Trucks
ANSI/UL 588 Christmas-Tree and Decorative-Lighting Outfits
UL 635 Insulating Bushings
ANSI/UL 668 Hose Valves For Fire Protection Service
ANSI/UL 745–1 Portable Electric Tools
ANSI/UL 745–2–1 Particular Requirements of Drills
ANSI/UL 745–2–2 Particular Requirements for Screwdrivers and Impact Wrenches
ANSI/UL 745–2–3 Particular Requirements for Grinders, Polishers, and Disk-Type Sanders
ANSI/UL 745–2–4 Particular Requirements for Sanders
ANSI/UL 745–2–5 Particular Requirements for Circular Saws and Circular Knives
ANSI/UL 745–2–6 Particular Requirements for Hammers
ANSI/UL 745–2–8 Particular Requirements for Shears and Nibblers
ANSI/UL 745–2–9 Particular Requirements for Tappers
ANSI/UL 745–2–11 Particular Requirements for Reciprocating Saws
ANSI/UL 745–2–12 Particular Requirements for Concrete Vibrators
ANSI/UL 745–2–14 Particular Requirements for Planers
ANSI/UL 745–2–17 Particular Requirements for Routers and Trimmers
ANSI/UL 745–2–30 Particular Requirements for Staplers
ANSI/UL 745–2–31 Particular Requirements for Diamond Core Drills
ANSI/UL 745–2–32 Particular Requirements for Magnetic Drill Presses
ANSI/UL 745–2–33 Particular Requirements for Portable Bandsaws
ANSI/UL 745–2–34 Particular Requirements for Strapping Tools
ANSI/UL 745–2–35 Particular Requirements for Drain Cleaners
ANSI/UL 745–2–36 Particular Requirements for Hand Motor Tools
ANSI/UL 745–2–37 Particular Requirements for Plate Jointers
UL 791 Residential Incinerators
UL 962 Household and Commercial Furnishings
ANSI/UL 985 Household Fire Warning System Units
ANSI/UL 1023 Household Burglar-Alarm System Units
UL 1075 Gas Fired Cooling Appliances for Recreational Vehicles
ANSI/UL 1247 Diesel Engines for Driving Centrifugal Fire Pumps
UL 1248 Engine-Generator Assemblies for Use in Recreational Vehicles
UL 1363 Temporary Power Taps
ANSI/UL 1419 Professional Video and Audio Equipment
ANSI/UL 1431 Personal Hygiene and Health Care Appliances
ANSI/UL 1468 Direct-Acting Pressure-Reducing and Pressure-Control Valves for Fire Protection Service
UL 1472 Solid-State Dimming Controls
ANSI/UL 1478 Fire Pump Relief Valves
ANSI/UL 1581 Reference Standard for Electrical Wires, Cables, and Flexible Cords
ANSI/UL 1637 Home Health Care Signaling Equipment
UL 1651 Optical Fiber Cable
UL 1682 Plugs, Receptacles, and Cable Connectors, of the Pin and Sleeve Type
UL 1684 Reinforced Thermosetting Resin Conduit
UL 1690 Data-Processing Cable
ANSI/UL 1692 Polymeric Materials—Coil Forms
UL 1693 Electric Radiant Heating Panels and Heating Panel Sets
UL 1694 Tests for Flammability of Small Polymeric Component
UL 1730 Smoke Detector Monitors and Accessories for Individual Living Units of Multifamily Residences and Hotel/Motel Rooms
ANSI/UL 1740 Industrial Robots and Robotic Equipment
UL 1821 Thermoplastic Sprinkler Pipe and Fittings for Fire Protection
UL 1838 Low Voltage Landscape Lighting Systems
UL 1889 Commercial Filters for Cooking Oil
UL 1951 Electric Plumbing Accessories
ANSI/UL 1963 Refrigerant Recovery/Recycling Equipment
ANSI/UL 1971 Signaling Devices for the Hearing Impaired
UL 1977 Component Connectors for Use in Data, Signal, Control and Power Applications
ANSI/UL 1981 Central Station Automation Systems
UL 1993 Self-Ballasted Lamps and Lamp Adapters

UL 1994 Low-Level Path Marking and Lighting Systems
UL 1995 Heating and Cooling Equipment
UL 1996 Duct Heaters
UL 2021 Fixed and Location-Dedicated Electric Room Heaters
UL 2024 Optical Fiber Cable Raceway
UL 2034 Single and Multiple Station Carbon Monoxide Detectors
ANSI/UL 2044 Commercial Closed Circuit Television Equipment
UL 2061 Adapters and Cylinder Connection Devices for Portable LP-Gas Cylinder Assemblies
ANSI/UL 2083 Halon 1301 Recovery/Recycling Equipment
UL 2085 Insulated Aboveground Tanks for Flammable and Combustible Liquids
ANSI/UL 2096 Commercial/Industrial Gas and/or Gas Fired Heating Assemblies with Emission Reduction Equipment
UL 2106 Field Erected Boiler Assemblies
UL 2111 Overheating Protection for Motors
ANSI/UL 2157 Electric Clothes Washing Machines and Extractors
ANSI/UL 2158 Electric Clothes Dryers
UL 2161 Neon Transformers and Power Supplies
UL 2250 Instrumentation Tray Cable
UL 2601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety
UL 3044 Surveillance Closed Circuit Television Equipment
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment; Part 1: General Requirements
UL 6500 Audio/Video and Musical Instrument Apparatus for Household, Commercial, and Similar General Use
UL 8730–1 Electrical Controls for Household and Similar Use; Part 1: General Requirements
UL 8730–2–3 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Ballasts for Tubular Fluorescent Lamps
UL 8730–2–4 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Motor Compressors or Hermetic and Semi-Hermetic Type
UL 8730–2–7 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Timers and Time Switches
UL 8730–2–8 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically Operated Water Valves

**Note**.—Testing and certification of gas operated equipment is limited to equipment for use with ''liquefied petroleum gas'' (''LPG'' or ''LP-Gas'').

[1] These standards are approved for equipment or materials intended for use in commercial and industrial power system applications. These standards are not approved for equipment or materials intended for use in installations that are excluded by the provisions of Subpart S in 29 CFR 1910, in particular Section 1910.302(a)(2).

The designations and titles of the above standards were current at the time of the preparation of the notice of the preliminary finding.

*Conditions*

Underwriters Laboratories Inc. must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

OSHA must be allowed access to UL's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If UL has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the organization that developed the test standard of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

UL must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, UL agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

UL must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

UL will continue to meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition;

UL will continue to meet the requirements for recognition in all areas where it has been recognized; and

UL will always cooperate with OSHA to assure compliance with the spirit as well as the letter of its recognition and 29 CFR 1910.7.

Signed at Washington, DC this 11th day of June, 1999.

**Charles N. Jeffress,**

*Assistant Secretary.*

[FR Doc. 99–16070 Filed 6–23–99; 8:45 am]

BILLING CODE 4510–26–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (99–091)]**

### NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Sun-Earth Connection Advisory Subcommittee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science Advisory Committee, Sun-Earth Connection Advisory Subcommittee.

**DATES:** Wednesday, July 7, 1999, 8:30 a.m. to 5:00 p.m., and Thursday, July 8, 1999, 8:30 a.m. to 5:00 p.m.

**ADDRESSES:** NASA Headquarters, Conference Room 5H46, 300 E Street, SW, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Dr. George Withbroe, Code S, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–2470.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

—Roadmap Issues
—Technology
—Education and Public Outreach
—Flight Programs
—Discipline Reports
—Long Duration Balloon Developments
—Sun Earth Connection Data System

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

**Lori B. Garver,**

*Associate Administrator for Policy and Plans.*

[FR Doc. 99–16081 Filed 6–23–99; 8:45 am]

BILLING CODE 7510–01–U

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–482–LT; CLI–99–19]**

### In the Matter of Kansas Gas and Electric Company, et al. (Wolf Creek Generating Station, Unit 1): Memorandum and Order

Commissioners: Shirley Ann Jackson, Chairman, Greta J. Dicus, Nils J. Diaz, Edward McGaffigan, Jr., Jeffrey S. Merrifield.

## I. Introduction

Pending before the Commission is a license transfer application filed on October 27, 1998, by Kansas Gas and Electric Company (KGE) and Kansas City Power and Light Company (KCPL) (Applicants) seeking Commission approval pursuant to 10 C.F.R. 50.80 of a transfer of their possession-only interests in the operating license for the Wolf Creek Generating Station, Unit 1, to a new company, Westar Energy, Inc. Currently Wolf Creek is jointly owned and operated by the Applicants, each of which owns an undivided 47% interest, and Kansas Electric Power Cooperative, Inc. (KEPCo), which owns the remaining 6% interest. The Applicants request that the Commission amend the operating license for Wolf Creek pursuant to 10 C.F.R. 50.90 by deleting KGE and KCPL as licensees and adding Westar Energy in their place.

Pursuant to the Commission's recently-promulgated Subpart M, 10 C.F.R. 2.1300 *et seq.*, KEPCo opposed the transfer on antitrust grounds, claiming, in a February 18, 1999, ''Petition to Intervene and Request for Hearing,'' that the transfer would have ''serious adverse and anticompetitive effects'' (p. 5), would result in ''significant changes'' in the competitive market (pp. 15–17), and, therefore, warrants an antitrust review under Section 105c of the Atomic Energy Act, 42 U.S.C. 2135(c). In response to the petition to intervene, on March 1, 1999, Applicants filed an ''Answer of Applicants to Petition to Intervene and Request for Hearing of the Kansas Electric Power Cooperative, Inc.'' Applicants requested that the Commission deny the petition because the issues raised were outside the scope of the license transfer proceeding, the positions taken were not factually supported, and the Commission had not made and should not make a finding of ''significant changes'' in the activities under the license.

By Memorandum and Order dated March 2, 1999, CLI–99–05, 49 NRC 199 (1999), the Commission indicated that although its staff historically has performed a ''significant changes'' review in connection with certain kinds of license transfers, it intended to consider in this case whether to depart from that practice and ''direct the NRC staff no longer to conduct significant changes reviews in license transfer cases, including the current case.'' The Commission stated that, in deciding this matter, it expected to consider a number of factors, including its statutory mandate, its expertise, and its resources. Accordingly, the Commission directed the Applicants and KEPCo to file briefs on the single question: ''whether as a matter of law or policy the Commission may and should eliminate all antitrust reviews in connection with license transfers and therefore terminate this adjudicatory proceeding forthwith.'' *Id.* at 200. The Commission also invited *amicus curiae* briefs.

Briefs and reply briefs have been filed by the Applicants and KEPCo. *Amicus* briefs were timely filed by the National Rural Electric Cooperative Association (NRECA), the Nuclear Energy Institute (NEI), the American Public Power Association (APPA), the Florida Municipal Power Agency (FMPA), the National Association of State Utility Consumer Advocates (NASUCA), and the American Antitrust Institute (AAI), and an untimely brief was filed by WML Associates (WML).[1]

Applicants argue that both legal and policy reasons justify the elimination of all antitrust reviews in license transfer proceedings. They state that by the express terms of Section 105 of the Atomic Energy Act, which is the sole source of the Commission's antitrust jurisdiction, antitrust reviews are required only at two stages of the licensing process: when an application for a construction permit is submitted and then when the application for the initial operating license is submitted. Applicants' position is that ''Commission antitrust review of a license transfer is not authorized by statute, nor would such a review be consistent with the purpose of section 105c. For these reasons, as a matter of law the Commission should eliminate all antitrust reviews in connection with license transfers.'' ''Initial Brief of Applicants in Response to the NRC's Memorandum and Order Regarding Antitrust Review of License Transfers' (March 16, 1999) (Applicants' Initial Brief) at unnumbered p. 11. Applicants state it clearly another way: ''Neither section 105c nor Commission case law supports a finding that the Commission has jurisdiction to review the antitrust implications of a license transfer * * *'' *Id.* at unnumbered p. 18. In addition to their argument that the Commission is not authorized to conduct antitrust reviews of transfer applications, Applicants also argue that there are compelling policy reasons why the Commission should not perform such reviews. Finally, and notwithstanding their ''lack of authority'' argument, Applicants request that the Commission decide this case not on the absence of authority, but rather on the merits of the merger and the antitrust issues (i.e., by finding no ''significant changes'' in the Applicants' activities).

KEPCo and NRECA, in their ''Joint Brief of the Kansas Electric Power Cooperative, Inc., and *Amicus Curiae* National Rural Electric Cooperative Association'' (March 16, 1999) (KEPCo Brief), argue that the Commission may not, as a matter of law, eliminate all antitrust reviews in license transfer proceedings. They argue that neither the statutory language nor its legislative history hint that Congress intended to allow the Commission to eliminate administratively any and all antitrust review when a nuclear power facility is sold or transferred. They further argue that even if the Commission had the statutory authority to eliminate such reviews, it cannot do so in this proceeding because applicable regulations ''unambiguously'' require a threshold ''significant changes'' determination which can only be changed by notice-and-comment rulemaking, which should not be undertaken for policy reasons.

NEI's position, reflected in the ''Amicus Brief of the Nuclear Energy Institute on the Issue of Antitrust Reviews in License Transfer Cases'' (March 31, 1999) (NEI Brief), is that the NRC has the legal authority to, and as a matter of policy should, eliminate antitrust reviews in license transfer cases as duplicative of other federal and state agencies with mandates to address competitive issues and because such reviews divert NRC's finite resources from its fundamental health and safety mission and constitute an unnecessary barrier to the completion of beneficial license transfers.

APPA and FMPA, in their ''Joint Brief of the American Public Power Association and Florida Municipal Power Agency'' (March 31, 1999) (APPA Brief), assert that a license transfer application seeks the issuance of an operating license requiring antitrust review and that this ''proposition is so plain it previously has never been challenged.'' APPA Brief at 3. APPA and FMPA argue that the Act, the Commission's regulations, and its consistent past practices would be unlawfully disregarded were the Commission to abandon antitrust reviews of license transfer applications.

NASUCA supports KEPCo's argument that the Commission may not, as a matter of law, eliminate all antitrust reviews in connection with license

[1] WML's brief was filed approximately five days after the time provided by CLI–99–05. WML's excuse is that the filing date coincided with Passover and the Easter holiday week and created unforeseen scheduling problems for it. Although WML has not satisfied us that it had good cause for the untimely filing, in the circumstances here we have considered WML's comments.

transfers. ''Amicus Filing, The National Association of State Utility Consumer Advocates'' (March 31, 1999) (NASUCA Brief).

AAI argues that antitrust is a primary statutory function of the Commission which can only be eliminated by Congress, though it can be limited by the Commission. ''Motion to Submit Comments and Comments of Amici Curiae of the American Antitrust Institute'' (March 31, 1999) (AAI Brief) at 4–5. AAI takes the position that the Commission's role of focusing an antitrust review on electric industry competitive problems cannot be substituted for by other agencies.

WML argues that the ''Commission's success in conducting competitive reviews is unchallenged,'' and that without delaying any construction permit or operating license, NRC antitrust license conditions have saved ''disadvantaged'' entities millions of dollars in ''monopoly rents'' and significantly enhanced the competitive environment of the bulk power services markets. *Amicus Curiae* Brief, WML Associates'' (April 5, 1999) (WML Brief) at 4. WML points out that Congress has not eliminated the NRC's antitrust function and speculates that, in view of its history, probably would not do so. *Id.* at 5.

**II. Analysis**

After consideration of the arguments presented in the briefs, and based on a thorough *de novo* review of the scope of the Commission's antitrust authority, we have concluded that the structure, language and history of the Atomic Energy Act cut against our prior practice of conducting antitrust reviews of post-operating license transfers. It now seems clear to us that Congress never contemplated such reviews. On the contrary, Congress carefully set out exactly when and how the Commission should exercise its antitrust authority, and limited the Commission's review responsibilities to the anticipatory, prelicensing stage, prior to the commitment of substantial licensee resources and at a time when the Commission's opportunity to fashion effective antitrust relief was at its maximum. The Act's antitrust provisions nowhere even mention post-operating license transfers.

The statutory scheme is best understood, in our view, as an implied prohibition against additional Commission antitrust reviews beyond those Congress specified. At the least, the statute cannot be viewed as a requirement of such reviews. In these circumstances, and given what we view as strong policy reasons against a continued expansive view of our antitrust authority, we have decided to abandon our prior practice of conducting antitrust reviews of post-operating license transfers and to dismiss KEPCo's antitrust-driven request for a hearing on the proposed Wolf Creek license transfer.

*A. The Atomic Energy Act*

1. Statutory Framework: The Antitrust Provisions

Analysis of the Commission's statutory authority must begin with the language and structure of the Atomic Energy Act itself. To properly interpret both the specific language and the overall scheme of the Commission's antitrust authority, it is important to understand the background and history of that statutory authority.

In 1954, Congress wished to eliminate the government monopoly over the development of atomic energy for peaceful purposes and provide the incentives of competition and free enterprise in the further development of nuclear power.[2] Since nuclear power technology was developed to a great extent at government (*i.e.*, taxpayer) expense, Congress believed that its benefits should be available to all on fair and equitable terms. Congress was concerned, however, that because the construction of large nuclear generating facilities was expensive and only the largest electric utility companies likely could afford such a capital asset, they could monopolize nuclear power plants and exclude smaller utility companies from sharing in the benefits of nuclear resources and thereby create an anticompetitive situation. It, therefore, was especially concerned that smaller electric systems have access to nuclear power plant electrical output by sharing in their ownership at the outset. Ownership access by itself, however, would be meaningless if the generated electricity could not be effectively transmitted and distributed by the smaller owners, many of whom were ''captive'' bulk power supply customers of the larger, dominant utilities which would be constructing and operating the nuclear facilities. Thus, ownership access had to be accompanied by other services such as ''wheeling'' of bulk power.

To alleviate these concerns, Congress amended the Atomic Energy Act of 1946 (''Act'') to authorize the Atomic Energy Commission, the NRC's predecessor, to conduct an antitrust review, in consultation with the Attorney General, prior to issuing a license for a nuclear generating facility. As subsequently amended in 1970, Section 105 of the Act, 42 U.S.C. 2135, requires the Commission to determine whether the activities under the license would create or maintain a situation inconsistent with the antitrust laws. The Commission, with its unique authority over the licenses it issues, also was given the authority to remedy such situations by refusing to issue licenses or by amending or conditioning them as it deemed appropriate. With this historical background in mind, the carefully-crafted antitrust review authority given to the Commission can be considered.

Section 105 of the Act is the sole source of the Commission's antitrust authority. Before examining the Commission's specific antitrust authority granted in Section 105, it is important to understand that this authority is not plenary but instead, as a general matter, is limited to certain types of applications or otherwise limited in scope or nature. No other provision of the Act grants any antitrust authority to the Commission. As the Commission stated some years ago:

> We find the specificity and completeness of Section 105 striking. The section is comprehensive; it addresses each occasion on which allegations of anticompetitive behavior in the commercial nuclear power industry may be raised, and provides a procedure to be followed in each instance.

*Houston Lighting & Power Company* (South Texas Project, Unit Nos. 1 and 2), CLI–77–13, 5 NRC 1303, 1311 (1977). Further, the Commission's antitrust authority is not derived from its broad powers provided by Sections 161 and 186 of the Act. *Id.* at 1317, 1317 n.12. Thus, absent Section 105, the Commission would have no antitrust authority.

Because the prelicensing antitrust reviews described in Section 105c. apply only to applications for certain types of licenses authorized under Section 103, we set out Section 103 before turning to Section 105. Section 103a provides, in relevant part:

> The Commission is authorized to issue to persons applying therefor to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import or export * * * utilization or

[2] *See* Report By The Joint Committee On Atomic Energy: Amending The Atomic Energy Act of 1954, As Amended, To Eliminate The Requirement For A Finding Of Practical Value, To Provide For Prelicensing Antitrust Review Of Production And Utilization Facilities, And To Effectuate Certain Other Purposes Pertaining To Nuclear Facilities, H.R. Rep. No. 91–1470 (also Rep. No. 91–1247), 91st Cong., 2nd Sess. at 8 (1970), 3 U.S. Code and Adm. News 4981 (1970) (''Joint Committee Report'') (*quoting* from legislative history of 1954 Act).

production facilities for industrial or commercial purposes.

Section 105 (''Antitrust Provisions'') of the Act[3] provides, in relevant part:

a. Nothing contained in this Act shall relieve any person from the operation of the [antitrust laws]. In the event a licensee is found by a court of competent jurisdiction, either in an original action in that court or in a proceeding to enforce or review the findings or orders of any Government agency having jurisdiction under the laws cited above, to have violated any of the provisions of such laws in the conduct of the licensed activity, the Commission may suspend, revoke, or take such other action as it may deem necessary with respect to any license issued by the Commission under the provisions of this Act.

b. The Commission shall report promptly to the Attorney General any information it may have with respect to any utilization of special nuclear material or atomic energy which appears to violate or tend toward the violation of any of the foregoing Acts, or to restrict free competition in private enterprise.

c. (1) The Commission shall promptly transmit to the Attorney General a copy of any license application provided for in paragraph (2) of this subsection, and a copy of any written request provided for in paragraph (3) of this subsection; and the Attorney General shall, within a reasonable time, but in no event to exceed 180 days after receiving a copy of such application or written request, render such advice to the Commission as he determines to be appropriate in regard to the finding to be made by the Commission pursuant to paragraph (5) of this subsection. Such advice shall include an explanatory statement as to the reasons or basis therefor.

(2) Paragraph (1) of this subsection shall apply to an application for a license to construct or operate a utilization or production facility under section 103: *Provided, however,* That paragraph (1) shall not apply to an application for a license to operate a utilization or production facility for which a construction permit was issued under section 103 unless the Commission determines such review is advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review by the Attorney General and the Commission under this subsection in connection with the construction permit for the facility.

* * * * *

(5) * * * The Commission shall give due consideration to the advice received from the Attorney General . . . and shall make a finding as to whether the activities under the license would create or maintain a situation inconsistent with the antitrust laws as specified in subsection 105a.

(6) * * * On the basis of its findings, the Commission shall have the authority to issue a license, to rescind a license or amend it, and to issue a license with such conditions as it deems appropriate.

* * * * *

Not surprisingly, the parties' and the amicus briefs focus almost exclusively on Section 105c, which describes the construction permit and operating license antitrust reviews, the antitrust finding the Commission must make, and the licensing remedies available to the Commission in the event of an adverse finding. While the language in Section 105c unquestionably is at the heart of the determination whether an antitrust review is required in connection with post-operating license transfer applications, we find that the scope of antitrust authority granted the Commission in Section 105 as a whole sheds considerable light on the correct interpretation of the specific language in Section 105c. And as will be seen, the structure of the Section 105 scheme, as well as the legislative history of Section 105, support the conclusion that Section 105c does not require, and indeed does not authorize, antitrust reviews of post-operating license transfer applications.[4]

a. Statutory Structure

We start at the beginning, and will examine each portion of Section 105 in turn. At the outset, Section 105a makes clear that nothing in Section 105 relieves any person (e.g., applicant or licensee—*see* Section 11s of the Act) from complying with any of the antitrust laws. Further, if any licensee is found by a court to have violated any antitrust law, then the Commission is empowered to suspend, revoke, or take such other action as it deems necessary, with respect to the license issued. Thus, after issuing an operating license, to the extent that an antitrust violation is found which may warrant some remedy involving the license itself, or ''licensed activities,'' the Commission could order a remedy. Similarly, Section 105b requires the Commission to report to the Attorney General any information it may have with respect to its licensees' anticompetitive practices. As will be seen, these provisions assist in understanding the nature and scope of the prelicensing antitrust reviews required by Section 105c.

Section 105c.(1) provides for transmittal of ''any license application provided for in paragraph (2)'' and related information to the Attorney General, and for advice, with explanatory reasons, from the Attorney General regarding the antitrust finding to be made by the Commission pursuant to paragraph (5).

Section 105c.(2) states that the review process provided in paragraph (1) ''shall apply to an application for a license to construct or operate'' a nuclear power facility but that ''paragraph (1) shall not apply to an application for a license to operate a * * * facility for which a construction permit was issued * * * unless the Commission determines such review is advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review by the Attorney General and the Commission * * * in connection with the construction permit for the facility.''

Section 105c.(5) requires the Commission, with respect to applications subject to paragraphs (1) and (2), ''to make a finding as to whether the activities under the license would create or maintain a situation inconsistent with the antitrust laws * * *.'' In the case of affirmative findings, Section 105c.(6) grants the Commission authority to refuse to issue the license, to rescind or amend it, or ''to issue a license with such conditions as it deems appropriate.''

The overall structure of the process designed by Congress to address its concerns about potential antitrust problems arising from the licensing of nuclear generating facilities is evident from the nature of its concerns and the

[3] A point of clarification is in order concerning ''antitrust laws.'' The ''Acts'' explicitly cited in Section 105a include the two most basic antitrust laws—the Sherman Act and the Clayton Act—as well as the Federal Trade Commission Act (FTC Act). Whether the FTC Act truly is an ''antitrust'' law is debatable. Clearly, conduct that violates the Sherman or Clayton Acts is also cognizable under Section 5 of the FTC Act. In *FTC* v. *Cement Institute,* 333 U.S. 683, 690–91 (1948), the Supreme Court specifically rejected the argument that because the price-fixing scheme (which the FTC had held was an ''unfair method of competition'') was cognizable under the Sherman Act, the FTC lacked jurisdiction. In general, all conduct prohibited by either the Sherman Act or the Clayton Act is within the scope of Section 5 of the FTC Act. *See FTC* v. *Brown Shoe Co.,* 384 U.S. 316 (1966); *FTC* v. *Motion Picture Advertising Service Co.,* 344 U.S. 392, 394 (1953); *Times-Picayune Publishing Co.* v. *United States,* 345 U.S. 594, 609 (1953); *Fashion Originators' Guild of America* v. *FTC,* 312 U.S. 457 (1941). But practices which do not necessarily violate either the letter or spirit of the traditional ''antitrust laws'' (the Sherman, Clayton and Robinson-Patman Acts) may nevertheless violate Section 5 of the FTC Act as unfair or deceptive acts or practices affecting consumers, regardless of their effect on competition. *FTC v. Sperry & Hutchison Co.,* 405 U.S. 233, 239 (1972). Whether or not purists would consider the FTC Act as an ''antitrust law,'' that act is one of the specific acts enumerated in Section 105a and we hereinafter include it in our use of the phrase ''antitrust laws.''

[4] The issue of our authority to conduct antitrust reviews of post-operating license transfers has not been explicitly addressed heretofore in any Commission adjudicatory decision (or elsewhere by the Commission). While some briefs contain arguments that certain past Commission adjudicatory decisions can be read to imply that the Commission has asserted such authority, and others suggest the opposite, we conclude that at most they reflect an *assumption* by the Commission of such authority, but certainly not a reasoned conclusion. Accordingly, past adjudicatory decisions provide, at best, marginally useful assistance in resolving this issue.

corresponding scheme provided above. To address the concern over smaller utilities' ability to obtain ownership access to a nuclear facility (and associated services such as ''wheeling'') before it operates and in order to resolve incipient antitrust problems before any competitors were damaged, a mandatory and ''complete'' antitrust review was provided at the construction permit stage of the licensing process.[5] At this time, all entities who might wish ownership access to the nuclear facility, and who are in a position to assert that the activities under the license would create or maintain a situation inconsistent with the antitrust laws, are able to seek an appropriate licensing remedy from the Commission prior to actual operation of the facility, thus realizing their fair benefits of nuclear power from the beginning of electrical power generation.

This construction permit review theoretically is the broadest antitrust review provided in the law, not only because it measures the competitive situation against all the antitrust laws, including the FTC Act, but also because the standard of anticompetitive conduct and basis for a remedy is not the traditional one of antitrust violations but the potential for the licensed activities to create or maintain ''a situation inconsistent with the antitrust laws.''[6] At the time Congress enacted Section 105, it envisioned this broad and comprehensive review at the construction permit phase of licensing a facility but, as we shall see, not at other licensing or post-licensing phases for the facility in question. Congress believed that at the construction phase—before the plant is built and before its operation is authorized by the Commission—the Commission would be peculiarly well-positioned to offer meaningful remedies, such as license conditions, if it found that granting the license would create or maintain a situation inconsistent with the antitrust laws.

The Commission's independent antitrust review responsibilities diminish from plenary reviews prior to initial licensing to passive information-reporting after licensing. Section 105c.(2) explicitly states that the Act's formal antitrust review provisions ''shall not apply to an application for a license to operate a utilization or production facility for which a construction permit was issued under section 103 unless the Commission determines such review is advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review * * * in connection with the construction permit for the facility.'' As suggested in the legislative history (*see* discussion below), Congress added this restriction—in effect, a prohibition of second antitrust reviews at the operating license stage absent a significant changes finding—as part of compromise legislation in 1970 intended both to require vigorous prelicensing antitrust reviews and to avoid undue disruption of utility planning and investment decisions.

Consistent with the progressively diminishing role Congress intended for the Commission regarding the competitive practices of its applicants and licensees, Sections 105a and b preserve traditional antitrust forums to resolve allegedly anticompetitive conduct by Commission licensees. Once a nuclear facility is licensed to operate, traditional antitrust forums—the federal courts and governmental agencies with longstanding antitrust expertise—are better equipped than the Commission to resolve and remedy antitrust violations by NRC licensees. To the extent that a court finds antitrust violations that arguably warrant some unique ''licensing'' relief that only this Commission can provide, such as by imposing conditions on the operating license, then 105a provides the Commission with remedial (but not review) authority.

From the mandatory and broad construction permit review to the conditional review in connection with the initial operating license, to the constricted review authority after issuance of the initial operating license (limited to information-reporting), Section 105, in concept, describes a logical and progressively more narrow and less active role for a Commission whose primary and almost sole responsibility under the Act is to protect the public health and safety and the common defense and security.[7]

b. Statutory Language

The overarching structure of the Commission's antitrust responsibilities, both the prelicensing construction permit and operating license antitrust reviews, as well as the post-operating license authority to order a remedy for antitrust violations found elsewhere, as described above, is consistent with the very purpose for the Congressional grant of specific and limited antitrust authority to the Commission. We turn now to our analysis and interpretation of the key statutory words and phrases material to the issue of whether Section 105 contemplates antitrust reviews of post-operating license transfer applications.

Although the antitrust laws continue to apply to all Commission licensees after issuance of the facility operating license and the Commission continues to have authority to order licensing type relief, if warranted, based on violations of the antitrust laws found by other forums (Sections 105a and b), the prelicensing antitrust reviews required by Section 105c are limited both in terms of the types of applications subject to the review and the threshold for conducting the review. Section 105c.(1) requires transmittal of antitrust information to the Attorney General only for a ''license application provided for in paragraph (2).'' Paragraph (2), in turn, applies to ''an *application* for a license to *construct or operate* a * * * facility under *section 103*'' but limits the review of operating license applications by stating that paragraph (1) ''*shall not apply to an application for a license to operate* a * * * facility for which a construction permit was issued under section 103 *unless* the Commission determines such review is advisable on the ground that *significant changes in the licensee's activities* or proposed activities have occurred *subsequent to the previous review by the Attorney General and the Commission * * * in connection with the construction permit for the facility*.'' Section 103a provides, in relevant part, that the ''Commission is authorized to issue licenses to persons applying therefor to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import or export * * * utilization or production facilities for industrial or commercial purposes.''

By its terms, Section 105c.(2) requires a Commission antitrust review of applications for certain activities. The only types of applications the provision explicitly subjects to antitrust review are those for construction permits and operating licenses issued under Section 103. Section 103, however, does not use

[5] The Commission's traditional process for licensing nuclear facilities is known as a two-step licensing process, consisting first of a construction permit followed by an operating license. *See* Section 185 of the Act, 42 U.S.C. 2235.

[6] *But see* note 22, *infra.*

[7] If the Commission has continuing antitrust review responsibility over post-operating license transfers, it conceivably could have to conduct at least a ''significant changes'' review almost 40 years after the initial operating license is issued, since Section 103 of the Act provides that Section 103 licenses are issued for up to 40 years. Nothing in the Act or in its legislative history—which, as we shall see below, focused on the Commission's ''anticipatory,'' prelicensing antitrust role—suggests that Congress intended to assign the Commission such extensive and long-lasting antitrust review duties.

either ''construct'' or ''operate'' to identify the activities for which the Commission is authorized to issue licenses. These two basic terms, which are the hallmarks of the NRC's historical two step licensing process (construction permit followed by operating license), are conspicuously absent from Section 103. To construct a facility, however, is the same as to manufacture or produce a facility. ''Construct'' in Section 105c.(2), therefore, is equivalent to the Section 103 activities of ''manufacture'' or ''produce.'' Similarly, to operate a facility is the same as to possess and use the facility. ''Operate'' in Section 105c.(2) thus is equivalent to the Section 103 activities of ''possess'' and ''use.'' The only types of applications expressly made subject to antitrust review under Section 105c.(2), therefore, are applications to manufacture or produce (''construct'') a facility and applications to ''possess'' and ''use'' (''operate'') a facility, not applications for any other activities requiring a license under Section 103.

Equally as conspicuous as the absence of the words ''construct'' and ''operate'' from Section 103 is the *inclusion* of ''acquire'' and ''transfer'' in Section 103 as activities explicitly requiring a license from the Commission. Yet Section 105c.(2) *does not,* explicitly or implicitly, identify applications to either ''acquire'' or ''transfer'' facilities as being subject to antitrust review. So the only types of applications explicitly mentioned in Section 105c.(2) as requiring an antitrust review (construction and operation) are not mentioned verbatim in Section 103 but are mentioned using equivalent language, while the type of application which is not mentioned in Section 105c.(2), but for which an antitrust review is urged by some (transfer), is identified verbatim in Section 103 (transfer) as well as in equivalency (acquire).

It would be strange, to say the least, if Congress intended the Commission to perform an antitrust review of post-operating license transfer (or acquisition) applications but did not mention applications for those Section 103 activities, either explicitly or equivalently, in Section 105c.(2), but instead mentioned only applications to ''construct'' and ''operate,'' two commonly used words for the Section 103 activities of manufacture or produce, and possess and use, respectively. Construing Section 105c.(2) in this fashion would violate the basic canon of construction that where a particular term is used in one section of a statute, neither it nor its equivalent should be implied in another section of the same statute where it is omitted. *See BFP* v. *Resolution Trust Co.*, 511 U.S. 531, 537 (1994); *R. Mayer of Atlanta, Inc.* v. *City of Atlanta*, 158 F.3d 538, 545 (11th Cir. 1998).

The explicit focus of Section 105c.(2) on applications for only two types of Section 103 activities—construction (manufacture or production) and operation (possess and use), coupled with the omission from Section 105c.(2) of any mention, either explicitly or by equivalency, of applications to ''transfer'' (or ''acquire'')—strongly suggests that our Section 105c prelicensing antitrust review authority does not include applications for post-operating license transfers. This conclusion is supported both by the overall structure of the Commission's antitrust authority provided in Section 105 and the specific language Congress used to authorize prelicensing antitrust reviews of only certain types of license applications. Congress's grant of limited antitrust review authority to the Commission does not give us free rein to conduct across-the-board reviews of license applications not specified by Congress. ''The duty to act under certain carefully defined circumstances simply does not subsume the discretion to act under other, wholly different, circumstances, unless the statute bears such a reading.'' *Railway Labor Executives' Ass'n* v. *National Mediation Bd.*, 29 F.3d 655, 671 (D.C. Cir. 1994) (*en banc*). *Accord, University of the District of Columbia Faculty Ass'n v. DCFRMAA*, 163 F.3d 616, 621 (D.C. Cir. 1998).

The only conceivable way to interpret Section 105c to require some form of antitrust review of applications to transfer an existing operating license is to construe the application to transfer as an application for an operating license.[8] But if it is so construed, Section 105c.(2) brings our antitrust review responsibility into play only if there is a ''significant changes'' finding made in accordance with the process described in that section. The mandated significant changes process, however, does not lend itself to reviews of post-operating license transfer applications.

To trigger the Commission's duty to conduct an antitrust review of an operating license application, there must be ''significant changes'' in the licensee's activities that ''have occurred subsequent to the previous review by the Attorney General and the Commission * * * *in connection with the construction permit for the facility*.'' Section 105c.(2). It is immediately obvious from this language that the statutory ''significant changes'' inquiry is not compatible with antitrust reviews of post-operating license transfers, for the statutory baseline from which to measure ''significant changes'' is the facility's construction permit, whereas at the time of post-operating license transfers the facility already would have received its operating license, and undergone a previous ''significant changes'' review. It would be absurd for the Commission to look back again to the original construction permit and make the ''significant changes'' inquiry anew.

In short, while the statutory method of making the ''significant changes'' finding reflects a common sense approach in the case of the initial—original—application for an operating license submitted to the Commission by the construction permit licensee, the approach makes no sense whatever if a post-operating license application for license transfer is construed as the equivalent of an initial operating license application and thus force-fit into the ''significant changes'' process. A comparison of activities of new licensees with activities of other licensees who underwent *at least* two previous antitrust reviews (there could be a series of post-operating license transfer applications) for any facility that underwent an operating license antitrust review makes no practical sense and also would ignore the significant changes explicitly found to exist between construction and initial operation of the facility. The statutory scheme and language are simply inconsistent with treating post-operating license transfer applications as operating license applications.

Interestingly, the Commission's past practice of conducting ''significant changes'' reviews of post-operating license transfer applications, now being reconsidered in this case, compared the activities at the time of transfer with those at the time of the previous operating license review, a comparison more logical than that required by the statute. We suspect that no one ever suggested that the Commission should have been using the statutorily-required

[8] Such a construction is at odds with reality, since no new license will be issued to effectuate a Commission-approved transfer. Instead, as will be true in this *Wolf Creek* case if the Commission approves the transfer request, a license amendment will be issued to reflect the new licensee. The Commission has characterized such amendments as ''essentially administrative in nature'' and not involving any significant substantive changes. Streamlined Hearing Process for NRC Approval of License Transfers, 63 FR 66727 (Dec. 3, 1998) (codified at 10 CFR Part 2, Subpart M). An amendment reflecting a license transfer does not require a prior hearing. *See Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CL1–92–4, 35 NRC 69, 77 (1992).

construction permit review as the benchmark for its ''significant changes'' determination for post-operating license transfer applications for the simple reason that it makes no sense in reality if post-operating license transfer applications are deemed to be ''operating license'' applications for purposes of a Section 105c antitrust review. This, too, strongly suggests that Section 105c cannot be read to require Commission antitrust reviews of post-operating license transfer applications and that the Commission's past practice of reviewing post-operating license transfer applications for significant changes is at odds with the clear language of the statute.

Because the statute does not explicitly address the issue of antitrust authority over post-operating license transfer applications, however, we turn to the legislative history for additional guidance on Congressional intent.

2. Legislative History

Desiring to end the government's monopoly over the development of nuclear power for peaceful purposes, Congress, in 1954, amended the Atomic Energy Act of 1946 to provide for further development by private enterprise. Because the development of nuclear power had theretofore been at government (i.e., taxpayer) expense, Congress wanted to ensure that commercial nuclear facilities were accessible to all types of electric utility systems, large investor-owned, smaller private ones, municipal systems, electric cooperatives, and others, on fair and equitable terms. Although large nuclear generating facilities would be expensive to construct, the non-capital generating costs were expected to be inexpensive (one AEC Chairman erroneously predicted that nuclear-generated electricity would be ''too cheap to meter''). This meant that, absent some mandated means to address this situation, large, wealthy, dominant electric utilities could achieve great economies of scale by constructing large, expensive nuclear facilities which the smaller utilities could not afford to do, thereby increasing the already dominant competitive position of the larger utilities in the marketplace. To address these concerns, Congress included in the 1954 Act a requirement that the Atomic Energy Commission ( the NRC's predecessor), in consultation with the Attorney General, conduct an antitrust review prior to issuing any license under Section 103 for a nuclear power facility for commercial or industrial purposes.[9]

Because nuclear power plants were being licensed in the years after the 1954 amendments under Section 104b as ''research and development'' facilities, however, no Section 105 antitrust reviews actually were being conducted. In 1970, the Joint Committee on Atomic Energy identified the Section 105c antitrust review requirement as a major roadblock to ''commercial'' licensing under Section 103 and in need of clarification and revision. *See* Joint Committee Report at 13. Proponents and opponents of prelicensing antitrust review expressed strong positions and emotions from one extreme to the other. *Id*. at 14. Proponents of prelicensing antitrust review feared that, absent such review, the large, already dominant utilities would further increase their market share and power by monopolizing nuclear power, with its large economies of scale, with the smaller private, municipal and cooperative systems denied their fair share of nuclear power. These proponents, therefore, urged the need and importance of antitrust review ''at the outset of the licensing process,'' ''before any competitor was damaged'' or ''much money and time has been spent.'' *See* Hearings at 21, 420, 481.[10]

Opponents of prelicensing review, on the other hand, believed that the Commission's Section 105a and b authority (to report anticompetitive conduct of its licensees to the Attorney General and to take licensing action to remedy antitrust violations found by a court) was sufficient by itself. Joint Committee Report at 14. They believed that it would be unreasonable and unwise to delay the construction and operation of nuclear facilities by imposing special antitrust reviews on those willing to invest in nuclear facilities. *Id*.

The AEC proposed an antitrust review at both the construction permit and operating license stages of the licensing process but with no operating license review in cases where antitrust concerns were satisfactorily resolved at the construction permit stage. Hearings at 38, 481. This proposal was met with strong opposition, including that of the Chairman of the Joint Committee. *See* Hearings at 37–38 (remarks of Rep. Holifield). The concern was that after a utility had planned, sized and constructed a facility to meet its customers' power requirements, including any requirements from the construction permit antitrust review, any further review would delay the licensing of the facility and unfairly damage the utility's considerable investment. *Id*. The legislation that resulted—including the limitation of such reviews to construction permit applications and adding the ''significant changes'' trigger for a second antitrust review of operating license applications—reflects a careful balancing and compromise of the respective concerns and positions. Joint Committee Report at 13. *See also* 116 Cong. Rec. H9449 (Daily Ed., Sept. 30, 1970). The 1970 amendments, which remain in effect today as reflected in Section 105, were passed by Congress after considering the Joint Committee Report.

As is evident from the language of Section 105c, the Commission's antitrust review obligations are triggered by applications for only two types of licenses issued under Section 103: construction permits and operating licenses. As indicated above, applications for activities requiring a license under Section 103 other than enumerated activities equivalent to ''construction'' or ''operation,'' such as ''acquire'' and ''transfer,'' are not included in Section 105c.(2). The legislative history is consistent with this reading. In its Report, the Joint Committee[11] made clear that the term ''license application'' referred only to applications for construction permits or operating licenses filed as part of the ''initial'' licensing process for a new facility not yet constructed, or for modifications which would result in a substantially different facility:

> The committee recognizes that applications may be amended from time to time, that there may be applications to extend or review [sic'renew] a license, and also that the form of an application for construction permit may

[9] Only commercial licenses issued under Section 103 of the Act were made subject to the antitrust review provisions. ''Research and development'' licenses issued under Section 104 were exempt from antitrust review. The 1954 Act authorized the issuance of commercial licenses only upon a written finding that such facilities had been ''sufficiently developed to be of practical value for industrial and commercial purposes.'' For many years after 1954, the Commission made no findings of ''practical value'' and issued all licenses for the construction and operation of civilian nuclear power plants as ''research and development'' facilities under Section 104b of the Act.

[10] Prelicensing Antitrust Review of Nuclear Power Plants: Hearings Before the Joint Committee on Atomic Energy, Part I, 91st Cong., 1st Sess. (1969), Part II, 91st Cong., 2d Sess. (1970).

[11] The Joint Committee Report is the best source of legislative history of the 1970 amendments. *See Alabama Power Co. v. NRC*, 692 F.2d, 1362, 1368 (11th Cir. 1982). The Report was considered by both houses in their respective floor deliberations on the antitrust legislation and is entitled to special weight because of the Joint Committee's ''peculiar responsibility and place . . in the statutory scheme.'' *See Power Reactor Development Co. v. International Union*, 367 U.S. 396, 409 (1961).

be such that, from the applicant's standpoint, it ultimately ripens into the application for an operating license. The phrases ''any license application'', ''an application for a license'', and ''any application'' as used in the clarified and revised subsection 105 c. refer to the initial application for a construction permit, the initial application for an operating license, or the initial application for a modification which would constitute a new or substantially different facility, as the case may be, as determined by the Commission. The phrases do not include, for purposes of triggering subsection 105 c., other applications which may be filed during the licensing process.

Joint Committee Report at 29. *See generally American Public Power Ass'n v. NRC*, 990 F.2d 1309, 1311–12 (D.C. Cir. 1993). These remarks were made with the narrow issue in mind of clarifying the scope of the terms ''license application'' and ''application for a license'' used in Section 105c and thus reasonably can ''be said to demonstrate a Congressional desire.'' *See Chevron U.S.A., Inc.* v. Natural Resources Defense Council, Inc., 467 U.S. 837, 862 (1984). The ''other applications which may be filed'' but which do not trigger an antitrust review clearly encompass applications for those activities listed in Section 103, such as transfers, that do not constitute construction or operation.[12]

In sum, the legislative history of the Commission's antitrust authority supports the overall scheme of one mandatory antitrust review at the initial construction permit stage of the licensing process and one potential antitrust review at the initial operating license stage if and only if there are significant changes from the previous construction permit review. So, too, does it support the interpretation of the term ''license application'' to exclude post-operating license transfer applications from an antitrust review based on their being interpreted as applications for an initial operating license.[13] There is no evidence in the statutory text or history that Congress expected the Commission to conduct antitrust reviews of post-operating license transfers. In such a detailed statutory scheme, Congressional silence on such transfers seems to us tantamount to an absence of agency authority. At the least, it cannot be said that Congress *required* antitrust reviews of post-operating license transfers.

*B. NRC Regulations, Guidance, and Practice*

The Commission's practice has been to perform a ''significant changes'' review of applications to directly transfer Section 103 construction permit and operating licenses to a new entity, including those applications for post-operating license transfers. While the historical basis for such reviews in the case of post-operating license transfer applications remains cloudy—it does not appear that the Commission ever explicitly focused on the issue of whether such reviews were authorized or required by law, but instead apparently assumed that they were[14]—the reasons, even if known, would have to yield to a determination that such reviews are not authorized by the Act. *See American Telephone & Telegraph Co.* v. FCC, 978 F.2d 727, 733 (D.C. Cir. 1992). We now in fact have concluded, upon a close analysis of the Act, that Commission antitrust reviews of post-operating license transfer applications cannot be squared with the terms or intent of the Act and that we therefore lack authority to conduct them. But even if we are wrong about that, and we possess some general residual authority to continue to undertake such antitrust reviews, it is certainly true that the Act nowhere requires them, and we think it sensible from a legal and policy perspective to no longer conduct them.

It is well established in administrative law that, when a statute is susceptible to more than one permissible interpretation, an agency is free to choose among those interpretations. *Chevron*, 467 U.S. at 842–43. This is so even when a new interpretation at issue represents a sharp departure from prior agency views. *Id.* at 862. As the Supreme Court explained in *Chevron*, agency interpretations and policies are not ''carved in stone'' but rather must be subject to re-evaluations of their wisdom on a continuing basis. *Id.* at 863–64. Agencies ''must be given ample latitude to ''adapt its rules and policies to the demands of changing circumstances.'' '' *Motor Vehicle Mfrs. Assn. of United States, Inc.* v. *State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 42 (1983), *quoting Permian Basin Area Rate Cases*, 390 U.S. 747, 784 (1968). An agency may change its interpretation of a statute so long as it justifies its new approach with a ''reasoned analysis'' supporting a permissible construction. *Rust* v. *Sullivan*, 500 U.S. 173, 186–87 (1991); *Public Lands Council* v. *Babbit*, 154 F.3d 1160, 1175 (10th Cir. 1998); *First City Bank* v. *National Credit Union Admin Bd.*, 111 F.3d 433, 442 (6th Cir. 1997); *see also Atchison, T. & S. F. Ry. Co.* v. *Wichita Bd. of Trade*, 412 U.S. 800, 808 (1973); *Hatch* v. *FERC*, 654 F.2d 825, 834 (D.C. Cir. 1981); *Greater Boston Television Corp.* v. *FCC*, 444 F.2d 841, 852 (D.C. Cir. 1971).

We therefore give due consideration to the Commission's established practice of conducting antitrust reviews of post-operating license transfer applications but appropriately accord

[12] In *American Public Power Ass'n v. NRC*, 990 F.2d 1309 (D.C. Cir. 1993), the Commission's determination that license renewal applications were not required to undergo a Section 105 antitrust review was upheld because such applications were not ''initial'' applications or applications for a ''new or substantially different facility.''

[13] In its Joint Brief (*amicus curiae*) (at 6), the American Public Power Association and the Florida Municipal Power Agency argue that it ''could not have been Congress's intention . . . that a utility must undergo an antitrust review if it applies for a construction permit, but not if it induces others to construct the project and then purchases the already-operational nuclear plant. After all, it is the *operation* of the plant, not its *construction*, that most offers the potential of harm to competition.'' (Emphasis in original.) We find it highly unlikely, to say the least, that one utility could ''induce'' another to construct a nuclear power plant in a sham scheme to obtain operational control of the completed and operationally-licensed plant without undergoing the *NRC*'s prelicensing antitrust review. Moreover, if that were suspected and could be proven, then it would be strong evidence that the inducing utility had serious concerns that its market position or competitive practices might run afoul of the antitrust laws. In that case, those who arguably have been injured could bring a private antitrust action or bring the matter to the attention of the Justice Department, FERC, the FTC, or other governmental agencies with traditional antitrust authority. And if NRC authority over the license were considered to be necessary to fashion an appropriate remedy, the Commission could exercise its Section 105a authority.

APPA also argues that Sections 184 and 189 of the Act prevent the Commission from foreclosing antitrust hearings on license transfers. APPA Brief at 9–10. Section 184 prohibits license transfers unless, ''after securing full information,'' the Commission finds the transfer in accordance with the Act, and Section 189 provides for hearings in certain licensing proceedings, including transfers. We disagree. If the Act does not require or even authorize antitrust reviews of post-operating license transfers, then antitrust issues associated with the transfer are not material to the license transfer decision and antitrust information is not required to be considered by the Commission, except perhaps to determine the fate of existing antitrust license conditions. We, therefore, do not believe that these provisions provide any obstacle to terminating these antitrust reviews.

[14] Until recently, the Commission's staff applied the ''significant changes'' review process to both ''direct'' and ''indirect'' transfers. Indirect transfers involve corporate restructuring or reorganizations which leave the licensee itself intact as a corporate entity and therefore involve no application for a new operating license. The vast majority of indirect transfers involve the purchase or acquisition of securities of the licensee (*e.g.*, the acquisition of a licensee by a new parent holding company). In this type of transfer, existing antitrust license conditions continue to apply to the same licensee. The Commission recently did focus on antitrust reviews of indirect license transfer applications and approved the staff's proposal to no longer conduct ''significant changes'' reviews for such applications because there is no effective application for an operating license in such cases. *See* Staff Requirements Memorandum (November 18, 1997) on SECY–97–227, Status Of Staff Actions On Standard Review Plans For Antitrust Reviews And Financial Qualifications And Decommissioning-Funding Assurance Reviews.

little weight to it in evaluating anew the issue of Section 105's scope and whether, even if such reviews are authorized by an interpretation of Section 105, they should continue as a matter of policy. Moreover, as we noted above, the Commission's actual practice of reviewing license transfer applications for significant changes is on its face inconsistent with the statutory requirement regarding how significant changes must be determined. The fact that the statutory method does not lend itself to post-operating license transfer applications, while the different one actually used does logically apply, also must be considered and suggests that such a review is not required by the plain language of the statute and was never intended by Congress.

In support of the arguments advanced in KEPCo's briefs and some of the *amicus* briefs that the Commission must conduct antitrust reviews of transfer applications, various NRC regulations and guidance are cited. Just as the Commission's past practices cannot justify continuation of reviews unauthorized by statute, neither can regulations or guidance to the contrary. Before accepting the argument that our regulations require antitrust reviews of post-operating license transfer applications, however, they warrant close consideration.

Section 50.80 of the Commission's regulations, 10 C.F.R. 50.80, ''Transfer of licenses,'' provides, in relevant part:

> (b) An application for transfer of a license shall include [certain technical and financial information described in sections 50.33 and 50.34 about the proposed transferee] as would be required by those sections if the application were for an initial license, and, if the license to be issued is a class 103 license, the information required by § 50.33a.

Section 50.33a, ''Information requested by the Attorney General for antitrust review,'' which by its terms applies only to applicants for construction permits, requires the submittal of antitrust information in accordance with 10 C.F.R. Part 50, Appendix L. Appendix L, in turn, identifies the information ''requested by the Attorney General in connection with his review, pursuant to section 105c of the Atomic Energy Act of 1954, as amended, of certain license applications for nuclear power plants.'' ''Applicant'' is defined in Appendix L as ''the entity applying for authority to construct or operate subject unit and each corporate parent, subsidiary and affiliate.'' ''Subject unit'' is defined as ''the nuclear generating unit or units for which application for construction or operation is being made.'' Appendix L does not explicitly apply to applications to transfer an operating license.

KEPCo argues that the section 50.80(b) requirement, in conjunction with the procedural requirements governing the filing of applications discussed below, requires the submittal of antitrust information in support of post-operating license transfer applications and that the Wolf Creek case cannot lawfully be dismissed without a ''significant changes'' determination. *See* KEPCo Brief at 11. While we agree that section 50.80 may imply that antitrust information is required for purposes of a ''significant changes'' review, linguistically it need not be read that way. The Applicants plausibly suggest that the phrase ''the license *to be* issued'' could be interpreted to apply only to entities that have not yet been issued an initial license. *See* App. Brief at 11.[15] Moreover, neither this regulation nor any other states the purpose of the submittal of antitrust information. For applications to construct or operate a proposed facility, it is clear that section 50.80(b), in conjunction with section 50.33a and Appendix L, requires the information specified in Appendix L for purposes of the Section 105c antitrust review, for construction permits, and for the ''significant changes'' review for operating licenses. But for applications to transfer an existing operating license, there are other Section 105 purposes which could be served by the information. Such information could be useful, for example, in determining the fate of any existing antitrust license conditions relative to the transferred license, as well as for purposes of the Commission's Section 105b responsibility to report to the Attorney General any information which appears to or tends to indicate a violation of the antitrust laws.

While we acknowledge that information submitted under section 50.80(b) has not been used for these purposes in the past, and has instead been used to develop ''significant changes'' findings, the important point is that section 50.80(b) is simply an information submission rule. It does not, in and of itself, mandate a ''significant changes'' review of license transfer applications. No Commission rule imposes such a legal requirement. Nonetheless, in conjunction with this decision, we are directing the NRC staff to initiate a rulemaking to clarify the terms and purpose of section 50.80 (b).[16]

KEPCo also argues that the Commission's procedural requirements governing the filing of license applications supports its position that antitrust review is required in this case. *See* KEPCo Brief at 11–13. The Applicants disagree, arguing that nothing in those regulations states that transfer applications will be subject to antitrust reviews. *See* App. Reply Brief at 3. For the same reasons we believe that the specific language in Section 105c does not support antitrust review of post-operating license transfer applications, we do not read our procedural requirements to indicate that there will be an antitrust review of transfer applications. Indeed, the language in 10 CFR 2.101(e)(1) regarding operating license applications under Section 103 tracks closely the process described in Section 105c. As stated in 10 CFR 2.101(e)(1), the purpose of the antitrust information is to enable the staff to determine ''whether significant changes in the licensee's activities or proposed activities have occurred since the completion of the *previous antitrust review in connection with the construction permit.*'' (Emphasis added.) As explained above, this description of the process for determining ''significant changes'' is consistent with an antitrust review of the initial operating license application for a facility but wholly inconsistent with an antitrust review of post-operating license transfer applications.

Nevertheless, clarification of the rules governing the filing of applications by explicitly limiting which types of applications must include antitrust information is appropriate. So too should Regulatory Guide 9.3, ''Information Needed by the AEC Regulatory Staff in Connection with Its Antitrust Review of Operating License Applications for Nuclear Power Plants,'' and NUREG–1574, ''Standard Review

[15] This reading is consistent with the history of section 50.80(b). Its primary purpose appears to have been to address transfers which were to occur before issuance of the initial (original) operating license, transfers which unquestionably fall within the scope of Section 105c. *See Detroit Edison Company* (Enrico Fermi Atomic Power Plant, Unit No. 2), LBP–78–13, 7 NRC 583, 587–88 (1978). When section 50.80(b) was revised in 1973 to require submission of the antitrust information specified in section 50.33a, the stated purpose was to obtain the ''*prelicensing* antitrust advice by the Attorney General.'' 38 FR 3955, 3956 (February 9, 1973) (emphasis added).

[16] In one important respect the language of section 50.80(b), quoted above, in fact supports the Commission's analysis of Section 105 and its legislative history. The phrase ''if the application were for an *initial license*'' certainly demonstrates that, consistent with the clearly intended focus of Section 105c on antitrust reviews of applications for initial licenses, the Commission has long distinguished initial operating license applications from license transfer applications. Be that as it may, clarification of section 50.80(b) will be appropriate in the wake of our decision that our antitrust authority does not extend to antitrust reviews of post-operating license transfer applications.

Plan on Antitrust Reviews,'' be clarified. In conjunction with this decision, we are directing the NRC staff to initiate an appropriate clarifying rulemaking.

*C. Policy Considerations; Other Agencies and Other Forums*

The parties' and *amicus* briefs, at our invitation, advanced policy reasons why the Commission should, or should not, terminate its practice of reviewing post-operating license transfer applications for antitrust considerations. Presuming that the Commission is free under the Act to continue its prior practice, we would abandon it as largely duplicative of other, more appropriate agencies' responsibilities, and not a sensible use of our limited resources needed to fulfill our primary mission of protecting the public health and safety and the common defense and security, from the hazards of radiation.

At the time of the 1970 antitrust amendments to the Atomic Energy Act, Congress believed that the Commission was in a unique position to ensure that the licensed activities of nuclear utilities could not be used to create or maintain a situation inconsistent with the antitrust laws. As explained above, the focus of the 1970 amendments was on prelicensing antitrust reviews conducted during the pendency of the two-step licensing process comprising applications for construction permits and initial operating licenses. In contrast to the competitive situation which existed in 1970, the current competitive and regulatory climate in which the electric utility industry operates is markedly different. Key statutory changes substantially enhance smaller utilities' ability to compete with the larger generating facilities and gain access to essential transmission services. These differences from 1970 reduce, if not eliminate, the incremental protection of competition that the NRC could provide through its antitrust reviews. To the extent that the Commission can still be considered to be in a unique position vis a vis other governmental authorities to address antitrust concerns, such uniqueness surely ends at the time the facility is granted its initial operating license.

In 1992, Congress passed the Energy Policy Act of 1992, Pub. L. 102–486 (EPAct), substantially enlarging the authority of the Federal Energy Regulatory Commission (FERC) to prevent and mitigate potential and existing abuses of market power by electric utilities, including nuclear utilities. Specifically, the EPAct amended sections 211 and 212 of the Federal Power Act,[17] 16 U.S.C. 824j and 824k, with respect to wholesale transmission services. Pursuant to these amended sections, any electric utility or person generating electricity may apply to FERC for an order requiring a transmission utility to provide transmission services to the applicant at prices recovering just and reasonable costs.

After enactment of the EPAct, FERC issued Orders 888 (April 24, 1996) and 888-A (March 4, 1997) which in part provide for tariffs to be filed regarding transmission service and certain necessary ancillary services.[18] In Order No. 888, FERC exercised its expanded statutory authority and required all public utilities that own, control or operate transmission facilities ''to have on file open access non-discriminatory transmission tariffs that contain minimum terms and conditions of non-discriminatory services.'' [19] Pursuant to these required tariffs, utilities can now enter into arrangements for transmission and ancillary services without instituting proceedings under section 211.

As a result, FERC now possesses statutory authority overlapping that of the NRC under Section 105 to remedy potential and existing anticompetitive conduct by the NRC's nuclear facility licensees, at least with respect to transmission services. As we noted above, transmission services are the services without which access to nuclear power facilities is meaningless and which, therefore, were of great concern to Congress in granting prelicensing antitrust review authority to the Commission. With this expanded FERC authority, however, the NRC cannot be said to be in a unique position to address or remedy antitrust problems involving access to transmission services. To the contrary, NRC antitrust review might even be said to be redundant and unnecessary. As FERC stated in Order 888–A, ''unbundled electric transmission service will be the centerpiece of a freely traded commodity market in electricity in which wholesale customers can shop for competitively-priced power.'' FERC Order 888–A, 62 FR 12,275 (1997). In conjunction with the Department of Justice's broad authority to enforce compliance by NRC licensees with the antitrust laws (*see* subsections 105a and b of the Act), this expanded FERC authority and enhanced competitive climate for the electric utility industry render the NRC's post-operating license antitrust reviews duplicative regulation contrary to the sound objective of a streamlined government.

Since 1970, changes in the Clayton Act also have contributed to eliminating any need for an NRC role in reviewing acquisitions of nuclear power facilities by new owners. The Hart-Scott-Rodino Antitrust Improvements Act or 1976, Pub. L. 94–435, 90 Stat. 1383 (1976), added section 7A to the Clayton Act, 15 U.S.C. 18a, which established a ''waiting period'' notification process which allows the Department of Justice and the Federal Trade Commission to screen certain commercial transactions such as acquisitions of assets [20] for potential violations of the antitrust laws before the transactions are consummated. Under section 7A(f), DOJ has the authority to institute a court proceeding to enjoin a transaction that it has determined would violate the antitrust laws. Since the Clayton Act standard, like that of Section 105c, is ''anticipatory'' in nature, designed to permit the correction of anticompetitive problems in their incipiency,[21] the scrutiny of DOJ's pre-acquisition review is comparable at least to the NRC's ''significant changes'' review.

In summary, the competitive and regulatory landscape has dramatically changed since 1970 in favor of those electric utilities who are the intended beneficiaries of the Section 105 antitrust reviews, especially in connection with acquisitions of nuclear power facilities and access to transmission services. For this Commission to use its scarce resources needed more to fulfill our primary statutory mandate to protect the public health and safety and the common defense and security than to duplicate other antitrust reviews and authorities [22] makes no sense and only

[17] Section 272 of the Atomic Energy Act provides that every NRC nuclear facility licensee is subject to the regulatory provisions of the Federal Power Act.

[18] It is our understanding that these FERC orders are currently undergoing judicial review.

[19] Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmission Utilities, 61 FR 21,540 (May 10, 1996), (to be codified at 18 CFR Parts 35 and 385), *reh'g denied in pertinent part*, Order 888–A, 62 FR 12,274 (March 14, 1997), *petitions for review pending, People of New York, supra* n.13.

[20] The transaction must meet certain threshold jurisdictional amounts, but acquisitions of nuclear power facilities always have met, and are expected to meet, the requirement and thus are subject to the screening process.

[21] *See generally Houston Lighting & Power Co.*, CLI–77–13, 5 NRC 1303 (1977).

[22] Theoretically, the Section 105c.(5) standard of ''whether the activities under the license would create or maintain a situation inconsistent with the antitrust laws' is broader than any used elsewhere in antitrust law enforcement since no actual violation is required. As a practical matter,

Continued

impedes nationwide efforts to streamline and make more efficient the federal government.

*D. Existing Antitrust License Conditions*

Whether or not the Commission conducts a ''significant changes'' review of post-operating license transfer applications, it still must consider the fate of any existing antitrust license conditions under the transferred license. Theoretically, at least, three possibilities exist: (1) The existing license conditions should be attached verbatim to the transferred license, (2) the existing conditions should be rescinded or eliminated in their entirety, or (3) the existing conditions should be modified and attached as modified to the transferred license. We do not believe it is possible in the abstract to generically preordain any one solution for all conceivable cases. The license conditions on their face, the nature of the license transfer, and perhaps the competitive situation as well, would need to be considered to determine what action were warranted in a given case. (For example, and without regard to the competitive situation, (1) it might be appropriate to retain the existing conditions where they apply only to a particular co-owner or co-operator which will remain a licensee under the transferred license, (2) it might be appropriate to remove the conditions where they apply to only one of several licensees and that one will no longer be a licensee after the transfer, and (3) it might be appropriate to remove existing conditions or modify references to licensees in the conditions when existing licensees to whom the conditions apply merge among themselves or with other entities and new corporate licensees will result.)

While the issue of the appropriate treatment of existing antitrust license conditions in the past would have been addressed as part of the ''significant changes'' review of license transfers, there will need to be some means provided for consideration of the matter in connection with transfers of licenses with existing antitrust license conditions. In such cases, the Commission will entertain submissions by licensees, applicants, and others with the requisite antitrust standing that propose appropriate disposition of existing antitrust license conditions. Here, antitrust license conditions are attached to the Wolf Creek license. We therefore direct all parties to this proceeding (and other persons with an interest in the license conditions) to submit letters to the Commission addressing the disposition of the conditions. Such letters shall be filed within 15 days of this decision and shall not exceed 15 pages.[23]

*E. Rulemaking Versus Adjudication*

KEPCo argues that the Commission cannot lawfully eliminate antitrust reviews by pronouncement in an adjudicatory decision, either in general or in this Wolf Creek case in particular, without first resorting to notice and comment rulemaking. *See* KEPCo brief at 11–14. KEPCo asserts that to do so would violate the NRC's regulations, *id.*, and such a policy determination could not lawfully be binding in other cases, *id.* at 13. We disagree.

As explained above, no NRC regulation explicitly mandates an antitrust review of post-operating license transfer applications. Not one comma of the Commission's current regulations need be changed in the wake of a cessation of such reviews, although because of the NRC's past practice of conducting such reviews, we have decided that clarification of our rules is warranted. Thus, while a dismissal of this antitrust proceeding based on a new but permissible interpretation of the Commission's authority would be contrary to past practice, it would not be contrary to the explicit language of any Commission rule.

With respect to the propriety of deciding in this proceeding that henceforth there will be no antitrust reviews of post-operating license transfer applications in this or any future cases, ''the Supreme Court has repeatedly emphasized that the choice between rulemaking and adjudication ''lies primarily in the informed discretion of the administrative agency.'' *General Am. Transp. Corp.* v. *ICC,* 883 F.2d 1029, 1031 (D.C. Cir. 1989), *quoting SEC* v. *Chenery Corp.,* 332 U.S. 194, 203 (1947). *See also Cassell* v. *FCC,* 154 F.3d 478, 485 (D.C. Cir. 1998).

In fact, what criticism there has been of agencies' use of adjudication to decide new general policy or changes in general policy has focused on the unfairness of doing so without giving nonparties advanced notice and opportunity to comment. *See General Am. Transp. Corp.,* 883 F.2d at 1030, and the authorities cited therein. For the very purpose of avoiding such unfairness, however, the Commission in this case sought *amicus curiae* briefs from ''any interested person or entity'' and received briefs on the issue from a number of nonparties. CLI–99–05, 49 NRC at 200, n.1. Widespread notice of the Commission's intent to decide this matter in this proceeding was provided by publishing that order on the NRC's web site and in the **Federal Register**, and also by sending copies to organizations known to be active in or interested in the Commission's antitrust activities. *Id.* While KEPCo and others may have preferred that the Commission proceed by rulemaking, the Commission is acting well within its discretion in deciding this matter now in this proceeding.

## III. Conclusion

For the foregoing reasons, the Commission has concluded that the Atomic Energy Act does not require or even authorize antitrust reviews of post-operating license transfer applications, and that such reviews are inadvisable from a policy perspective. We therefore dismiss KEPCo's petition to intervene on antitrust grounds. Applicants and KEPCo may submit letters to the Commission suggesting the appropriate disposition of the existing antitrust license conditions due to the planned changes in Wolf Creek ownership and operation. All such letters shall be submitted to the Office of the Secretary no later than 15 days after the date of this Order and shall not exceed 15 pages in length. Any other person with an interest in the Wolf Creek antitrust license conditions also may submit a letter, not to exceed 15 pages, within 15 days of the date of this Order. Finally, the NRC staff will be directed to initiate a rulemaking to clarify the Commission's regulations to remove any ambiguities and ensure that the rules clearly reflect the views set out in this decision.

It is so ordered.

Dated at Rockville, Maryland this 18th day of June, 1999.

however, it is difficult at best to even envision a competitive situation which satisfied the Section 105 standard for relief but would not warrant relief under traditional antitrust statutes, which have been broadly construed by the courts. For example, Section 5 of the FTC Act has been held to empower the FTC ''to arrest trade restraints in their incipiency without proof that they amount to an outright violation of Section 3 of the Clayton Act or other provisions of the antitrust laws.'' *FTC* v. *Brown Shoe Co.,* 384 U.S. 316, 322 (1966). Thus, there will be no realistic gap in antitrust law enforcement if the NRC no longer performs antitrust reviews of post-operating license transfer applications.

[23] Consideration of the Wolf Creek antitrust license conditions is not inconsistent with our holding that the NRC need not conduct ''significant changes'' antitrust reviews of license transfers, for the Wolf Creek conditions were imposed at a licensing stage (initial licensing) when the NRC undoubtedly had antitrust authority. The Commission plainly has continuing authority to modify or revoke its own validly-imposed conditions. *See Ohio Edison Co.* (Perry Nuclear Power Plant, Unit 1), CLI–92–11, 36 NRC 47, 54–59 (1992).

For the Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 99–16073 Filed 6–23–99; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Notice

**AGENCY HOLDING THE MEETING:** Nuclear Regulatory Commission.

**DATES:** Weeks of June 21, 28, July 5, and 12, 1999.

**PLACE:** Commisioners' Conference Room 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

*Week of June 21*

Tuesday, June 22

3:00 p.m.
Affirmation Session (Public Meeting). (If needed)

*Week of June 28—Tentative*

There are no meetings scheduled for the Week of June 28.

*Week of July 5—Tentative*

There are no meetings scheduled for the Week of July 5.

*Week of July 13—Tentative*

Tuesday, July 13

9:30 a.m.
Briefing on Treatment of Existing Programs for License Renewal (Public Meeting)

Thursday, July 15

10:00 a.m.
Briefing on Existing Event Response Procedures (Including Federal Response Plan and Coordination of Federal Agencies in Response to Terrorist Activities) (Public Meeting)

11:30 a.m.
Affirmation Session (Public Meeting) (If needed)

**Note:** The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

**CONTACT PERSON FOR MORE INFORMATION:** Bill Hill (301) 415–1661.

**ADDITIONAL INFORMATION:** By a vote of 5–0 on June 18, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of Kansas Gas & Elec. Co., et al. (Wolf Creek Generating Station, Unit 1), Docket No. 50–482 (Antitrust Issues)'' (PUBLIC MEETING) be held on June 18, and on less than one week's notice to the public.

By a vote of 4–1 on June 18, the Commission determined pursuant to U.S.C. 552b(e) and § 9,107(a) of the Commission's rules that ''Affirmation of Final Revision To 10 CFR 50.65 To Require Licensees To Perform Assessments Before Performing Maintenance'' (PUBLIC MEETING) be held on June 18, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at:http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

**William M. Hill, Jr.,**

*SECY Tracking Officer, Office of the Secretary.*

[FR Doc. 99–16193 Filed 6–22–99; 11:45 am]

BILLING CODE 7590–01–M

## OFFICE OF MANAGEMENT AND BUDGET

### Implementation of the Federal Activities Inventory Reform Act of 1998 (Public Law 105–270) (''FAIR Act'')

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** OMB issues final guidance on the implementation of the FAIR Act.

**SUMMARY:** The Office of Management and Budget (OMB) hereby issues guidance to implement the ''Federal Activities Inventory Reform Act of 1998''.

To facilitate and ensure agency implementation of the ''Federal Activities Inventory Reform Act of 1998'' (Public Law 105–270) (''FAIR Act''), OMB is revising its existing guidance on the management of commercial activities through revisions to OMB Circular A–76, ''Performance of Commercial Activities,'' and to its Supplemental Handbook. These revisions inform agencies of the FAIR Act's requirements; implement the statutory requirements of the FAIR Act; avoid duplication and confusion by conforming guidance to the FAIR Act, and place the FAIR Act's requirements in the context of the Federal Government's larger reinvention, competition and privatization efforts.

**DATES:** This guidance is effective June 24, 1999.

**FOR FURTHER INFORMATION CONTACT PERSON:** Mr. David Childs, Office of Management and Budget, NEOB Room 6002, 725 17th Street, NW, Washington, DC 20503, telephone: (202) 395–6104, FAX: (202) 395–7230.

**AVAILABILITY:** Copies of the updated versions of OMB Circular A–76, its Revised Supplemental Handbook and this Transmittal Memorandum 20 are available from OMB on the Internet at: *http://www.whitehouse.gov/OMB/circulars/index-procure.html*

**SUPPLEMENTARY INFORMATION:**

#### I. The Federal Activities Inventory Reform Act

On October 12, 1998, President Clinton signed into law the ''Federal Activities Inventory Reform Act of 1998'' (''FAIR Act'' or ''Act''). The FAIR Act directs Federal agencies to submit each year an inventory of all their activities that are performed by Federal employees but are not inherently Governmental (i.e., are commercial). OMB is to review each agency's Commercial Activities Inventory and consult with the agency regarding its content. Upon the completion of this review and consultation, the agency must transmit a copy of the inventory to Congress and make it available to the public. The FAIR Act establishes an administrative appeals process under which an interested party may challenge the omission or the inclusion of a particular activity on the inventory. Finally, the FAIR Act requires agencies to review the activities on the inventory. Each time that the head of an executive agency considers contracting with a private sector source for the performance of such an activity, the head of the executive agency shall use a competitive process. When conducting cost comparisons, agencies must ensure that all costs are considered.

In enacting the FAIR Act, Congress did not displace longstanding Executive Branch policy regarding the performance of commercial activities. The Federal Government seeks to achieve economy and enhance productivity and quality through competition to obtain the best service at least cost to the American taxpayer. This Federal policy regarding the performance of commercial activities has been provided by OMB Circular A–76, ''Performance of Commercial

Activities.'' Specific guidance regarding the implementation of this policy is provided by the March 1996 Revised Supplemental Handbook to OMB Circular A–76 and by agency consultation with OMB.

The Act codified some of this guidance in law. In particular, the FAIR Act codified the pre-existing requirement for agencies to inventory their commercial activities, as well as the pre-existing definition of ''inherently governmental function.''

Each time an agency considers changing from Government employee performance of a commercial activity on the inventory, the FAIR Act requires that a competitive process be used and that cost comparisons ''shall ensure that all costs * * * are considered and that the costs considered are realistic and fair''. Here, too, the Act codifies or defers to pre-existing Executive Branch policy.

**II. Implementation of the FAIR Act**

OMB Circulars are a well-established vehicle for directing agencies on the management of their activities. Together, Circular A–76 and its Supplemental Handbook have established the broad principles, individual definitions and specific directives on the management of commercial activities, including the inventory and other items codified by the FAIR Act. OMB wanted to provide the agencies with prompt and clear guidance on how to implement the Act within the short time-frame available. OMB concluded that the best way to provide agencies with clear and prompt guidance on how to implement the FAIR Act was to revise the current circular and handbook so that they conform to the FAIR Act. OMB's goal in drafting these revisions was to ensure that the agencies fully implement the FAIR Act's requirements, and that the agencies do so without confusion, wasted effort or delays caused by uncertainty about the applicability of current guidance.

Accordingly, on March 1, 1999, OMB requested agency and public comments on proposed revisions to the Handbook to implement the FAIR Act (64 FR 10031). The proposed revisions would inform agencies of the FAIR Act requirements and, to avoid confusion, conform the Handbook's provisions so that they cross-reference and parallel relevant FAIR Act provisions.

To implement the FAIR Act's inventory requirement, OMB proposed to make conforming changes to the Handbook's pre-existing inventory requirement. The changes incorporated the statutory due date of June 30th for agency submissions to OMB and added, to the inventory's description of each activity, two new data elements required by the FAIR Act.

In addition, OMB proposed provisions to the Handbook to address the FAIR Act's other requirements. These provisions:

(1) Reiterated the requirements for OMB to review the commercial activity inventories and to consult with the agencies regarding them; for the agencies, after OMB's review-and-consultation is completed, to send the inventories to Congress and to make them available to the public; and for the agencies to hear and decide administrative ''challenges'' in which interested parties challenge an agency's decision to include an activity in (or exclude an activity from) the inventory; and

(2) Incorporated the FAIR Act's requirement that agencies ''review'' the activities on the inventory; that an agency, each time it considers contracting with a private sector source for the performance of an activity listed on the inventory, use a competitive process to select the source (unless otherwise provided ''in a law other than this Act, an Executive order, regulations, or any Executive Branch circular''); and that, when comparing costs, ''all costs * * * are considered and * * * are realistic and fair.''

OMB proposed that agencies rely on and implement the existing guidance with respect to the cost-comparison competition requirements of the FAIR Act. These procedures are well-established and direct agencies to create a competitive process that compares costs completely, accurately, and fairly.

OMB received 82 responses to its request for comments: 10 Federal agencies, 61 industry or trade groups, and 8 employee organizations responded, in addition to 4 letters from members of Congress. A discussion of the significant comments, and OMB's responses to those comments, is provided in the Appendix to this notice.

After considering all comments received on the proposed guidance, OMB is issuing final guidance to the agencies for implementing the FAIR Act. The guidance consists of changes to the A–76 Circular, itself, as well as its Supplemental Handbook.

In order to implement the FAIR Act, OMB is making several changes to the guidance as proposed on March 1:

OMB has revised Circular A–76, itself, in addition to the Supplemental Handbook, to conform to the requirements of the FAIR Act;

To ensure that agencies comply with the FAIR Act's requirement for review on an inventory within a reasonable time, OMB will now require annual reports that will, among other things, discuss the implementation, status, and results of the FAIR Act process;

OMB has clarified that agencies should, as appropriate, permit employee involvement in the development of the inventory;

OMB is revising agency reporting requirements so that reporting is clearer on activities that have been converted from contract performance to in-house performance or retained in-house as a result of a cost-comparison.

With the issuance of these revisions, agencies have been provided guidance for implementing the FAIR Act. OMB will continue, as it has in the past, to consult with individual agencies and provide informal guidance as necessary.

**III. Executive Branch Management of Commercial Activities Generally**

Implementing the FAIR Act is only a part of the Government's reinvention and management responsibilities. Improving the quality, and reducing the cost, of commercial activities is an integral part of managing the Nation's resources. The agencies and OMB have an ongoing responsibility to ensure that these activities are performed in a manner that is cost-effective and in the best interest of the taxpayer. Developing an inventory of each agency's commercial activities is a necessary first step in pursuing this objective, one that has now been codified by the FAIR Act. Once these inventories are developed, they will then be reviewed, by the agencies and OMB, to identify ways to improve the performance of the Federal Government's commercial activities.

Equally important, however, is how the agencies manage these activities after they are identified. In order better to manage commercial activities, OMB revised the Supplemental Handbook in 1996. The Revised Supplemental Handbook seeks the most cost-effective means of obtaining commercial support services and provided new administrative flexibility in the Government's ''make or buy'' decision process. The revision modified and, in some cases, eliminated cost comparison requirements for recurring commercial activities and the establishment of new or expanded interservice support agreements; reduced reporting and other administrative burdens; provided for enhanced employee participation; eased transition requirements to facilitate employee placement; maintained a level playing field for cost comparisons between Federal, interservice support agreement and private sector offers, and improved accountability and oversight

to ensure that the most cost effective decision is implemented.

As part of this guidance, OMB is now taking the additional step of requiring agencies to submit annual reports that will discuss the implementation, status, and results of the FAIR Act process. As we develop experience with the FAIR Act and these procedures, we will consider whether additional guidance is needed, either for implementation of the FAIR Act in particular or on management of commercial activities in general.

**Jacob J. Lew,**

*Director.*

June 14, 1999.

Circular No. A–76 (Revised)
Transmittal Memorandum No. 20

To The Heads of Executive Departments and Agencies

Subject: Implementing the Federal Activities Inventory Reform Act Through Conforming Changes to OMB Circular No. A–76 and its March 1996 Revised Supplemental Handbook.

This Transmittal Memorandum implements the statutory requirements of the Federal Activities Inventory Reform Act (''The FAIR Act''), Public Law 105–270. As part of its longstanding role in the review and oversight of agency management and the allocation of resources, OMB has established policies regarding the performance of commercial activities by Federal agencies. These policies are outlined in OMB Circular No. A–76 and its Revised Supplemental Handbook. The FAIR Act reinforced these policies and procedures; codified certain requirements with respect to the development by agencies of an annual commercial activities inventory, and added an opportunity for interested parties to challenge the contents of the annual inventory.

The changes to the Circular's Revised Supplemental Handbook (Attachment 1) inform agencies of the FAIR Act's requirements; implement the statutory requirements of the FAIR Act; avoid duplication and confusion by conforming the Supplemental Handbook to the provisions of the FAIR Act; and place the FAIR Act's requirements in the context of the Federal Government's larger reinvention, competition and privatization efforts. As a result of these changes, the Circular is also being updated with conforming changes necessary to reflect the requirements of the FAIR Act (Attachment 2). The previous OMB Circular A–76 was published in the August 16, 1983, **Federal Register** at pages 37110–37116. The March 1996 Revised Supplemental Handbook was issued through Transmittal Memorandum 15, published in the April 1, 1996, **Federal Register** at pages 14338–14346.

Under the FAIR Act, agencies are required to submit their commercial activity inventories to OMB by June 30th of each year, starting this year. THE FIRST FAIR ACT INVENTORIES ARE, THEREFORE, DUE IN TWO WEEKS. OMB looks forward to working with the agencies during our review of these inventories, and stands ready to assist the agencies as the Executive Branch moves forward in its implementation of the FAIR Act.

Questions regarding the FAIR Act or this guidance may be addressed to Mr. David Childs (phone: (202) 395–6104, Fax: (202) 395–7230).

**Jacob J. Lew,**

*Director.*

Attachments

**Attachment 1.—Revisions to the OMB Circular A–76 March 1996 Revised Supplemental Handbook**

1. The Introduction to the Supplemental Handbook (p. iii) is revised to reflect the fact that challenges to the activities listed in the Commercial Activities Inventory are permitted under the FAIR Act, by adding to the end of the last sentence on page iii the following:

''* * * and as set forth in Appendix 2, Paragraph G, consistent with Section 3 of the Federal Activities Inventory Reform Act of 1998 (FAIR Act, P.L. 105–270).''

2. Part I, Chapter 1, paragraphs A, B.1 and F, of the Supplemental Handbook (pp. 3, 5) are revised to reflect the requirements of the FAIR Act. As revised, paragraphs A, B.1 and F read as follows:

**''A. General**

This Part sets forth the principles and procedures for managing the Government's acquisition of recurring commercial support activities, implementing the ''Federal Activities Inventory Reform Act of 1998'' (''The FAIR Act''), P.L. 105–270, and Circular A–76. Exhibit 1 summarizes the conditions that permit conversion to or from in-house, contract or Inter-Service Support Agreement (ISSA) performance. The requirements of the FAIR Act apply to the following executive agencies: (1) An executive department named in 5 U.S.C. 101, (2) a military department named in 5 U.S.C. 102, and (3) an independent establishment as defined in 5 U.S.C. 104. The requirements of the FAIR Act do not apply to: (1) The General Accounting Office, (2) a Government corporation or a Government controlled corporation as defined in 5 U.S.C. 103, (3) a non-appropriated funds instrumentality if all of its employees are referred to in 5 U.S.C. 2105(c), or (4) Depot-level maintenance and repair of the Department of Defense as defined in 10 U.S.C. 2460.''

**''B. Inherently Governmental Activities**

1. Inherently Governmental activities are not subject to the FAIR Act, Circular A–76 or this Supplemental Handbook. As a matter of policy, an inherently Governmental activity is one that is so intimately related to the exercise of the public interest as to mandate performance by Federal employees. The Office of Federal Procurement Policy (OFPP) Policy Letter 92–1, dated September 23, 1992 (**Federal Register**, September 30, 1992, page 45096), provides guidance on the identification of inherently Governmental activities (see Appendix 5). This guidance conforms to the definition provided at Section 5, paragraph 2, of the FAIR Act.''

**''F. Commercial Activities Inventory**

As required by the FAIR Act, Circular A–76 and this Supplemental Handbook, each agency will maintain a detailed inventory of all in-house commercial activities performed by its Government employees. This inventory, as described at Appendix 2 of this Supplement, and any supplemental information requested by OMB, will be submitted not later than June 30 of each year. Agencies should, as appropriate, permit employee involvement in the development of this Commercial Activities Inventory.''

3. Part II, Chapter 1, Paragraph A.1 of the Supplemental Handbook (p. 17) is revised by adding a reference to the FAIR Act. As revised, Paragraph A.1 reads as follows:

''1. Part II provides generic and streamlined cost comparison guidance to comply with the provisions of the FAIR Act and Circular A–76. This includes guidance for developing in-house costs based upon the Government's Most Efficient Organization (MEO) and other adjustments to the contract and inter-service support agreement (ISSA) price. It also sets out the principles for development of cost-based performance standards or other measures that are comparable to those used by commercial sources. Appendices 6 and 7 provide sector-specific cost comparison guidance.''

4. The title of Appendix 2 of the Supplemental Handbook (p. 38) and the corresponding entry in the Table of Contents are revised from ''OMB Circular No. A–76 Inventory'' to ''Commercial Activities Inventory.'' Portions of this inventory are now required by the FAIR Act, as a matter or law.

5. Paragraph A of Appendix 2 of the Supplemental Handbook (p. 38) is revised in several ways. The introductory sentences now refer to the FAIR Act's requirements for a Commercial Activities Inventory and incorporate its due date (June 30th) for submission to OMB of each agency's inventory. Two data elements are added to the inventory's description of an activity. These additional data elements (g and h, below) correspond to the new data elements required under Section 2(a) (1) and (3) of the FAIR Act. In addition, the existing data element for ''Location / organization unit'' is being separated into two elements (''Location'' and ''Organization Unit''). Finally, a concluding sentence is added to clarify that agencies have the flexibility to automate and structure the inventory so long as all the listed data elements are included. As revised, Paragraph A reads as follows:

**''A. Annual Inventory Submission**

In accordance with the FAIR Act, Circular A–76 and this Handbook, each agency must submit to OMB, by June 30 of each year, a detailed Commercial Activities Inventory of all commercial activities performed by in-house employees, including, at a minimum, the following:

a. Organization unit.
b. State(s).
c. Location(s).
d. FTE.
e. Activity function code.
f. Reason code.

g. Year the activity first appeared on FAIR Act Commercial Activities Inventory (initial value will be 1999).

h. Name of a Federal employee responsible for the activity or contact person from whom additional information about the activity may be obtained.

i. Year of cost comparison or conversion (if applicable).

j. CIV/FTE savings (if applicable).

k. Estimated annualized Cost Comparison dollar savings (if applicable).

l. Date of completed Post-MEO Performance Review (if applicable).

Agencies have the discretion to automate and to structure the initial submission of the detailed inventory as they believe most appropriate, so long as the inventory includes each of these data elements. Agencies must transmit an electronic version of the inventory to OMB as well as two paper copies. The electronic version should be in a commonly used software format (commercial off-the-shelf spreadsheet, database or word processing format). OMB anticipates issuing additional guidance on the structure and format of future inventory submissions, based on the experience gained from the first annual review and consultation process.''

6. To reflect the FAIR Act's requirement that information on full time employees (or its equivalent) be included, paragraph C of Appendix 2 of the Supplemental Handbook (p. 38) has been revised as follows:

**''C. FTE**

Enter the number of authorized full-time employees or FTE (as applicable) in the commercial activity function or functions as of the date of the inventory. Employees performing inherently Governmental activities are not reported in the Commercial Activities Inventory.''

7. Paragraph E ''A–76 Reason Codes'' of Appendix 2 of the Supplemental Handbook (p. 38) is retitled ''Reason Codes.'' The phrase ''agency A–76 inventories'' is changed to ''Commercial Activities Inventory'' and ''Reason code E'' is revised and a new reason code ''I'' is added as follows:

''E Indicates that the function is retained in-house as a result of a cost comparison.''

''I Indicates the function is being performed in-house as a result of a cost comparison resulting from a decision to convert from contract to in-house performance.''

8. Appendix 2 of the Supplemental Handbook (p. 38) is further revised by adding three new paragraphs. New paragraph ''G'' describes the review and publication of the detailed agency Commercial Activities Inventory and the challenge-and-appeals process pertaining to its content, as required by the FAIR Act. The new paragraph ''H'' includes the FAIR Act's requirements that agencies review the commercial activities in their inventories and use a competitive process or established cost comparison procedures each time an agency considers contracting with a private-sector source for the performance of an activity on the inventory. New paragraph ''I'' alerts agencies to the requirement for an annual Report on Agency Management of Commercial Activities. The new paragraphs read as follows:

**''G. Inventory Review and Publication; Challenges and Appeals**

1. Review and Publication: In accordance with Section 2 of the FAIR Act, OMB will review the agency's Commercial Activities Inventory and consult with the agency regarding its content. After this review is completed, OMB will publish a notice in the **Federal Register** stating that the inventory is are available to the public. Once the notice is published, the agency will transmit a copy of the detailed Commercial Activities Inventory to Congress and make the materials available to the public through its Washington, DC or headquarters offices.

2. Challenges and Appeals: Under Section 3 of the FAIR Act, an agency's decision to include or exclude a particular activity from the Commercial Activities Inventory is subject to administrative challenge and, then, possible appeal by an ''interested party.'' Section 3(b) of the FAIR Act defines ''interested party'' as:

a. A private sector source that (A) is an actual or prospective offeror for any contract or other form of agreement to perform the activity; and (B) has a direct economic interest in performing the activity that would be adversely affected by a determination not to procure the performance of the activity from a private sector source.

b. A representative of any business or professional association that includes within its membership private sector sources referred to in a. above.

c. An officer or employee of an organization within an executive agency that is an actual or prospective offeror to perform the activity.

d. The head of any labor organization referred to in section 7103(a) (4) of title 5, United States Code that includes within its membership officers or employees of an organization referred to in c. above.

3. An interested party may submit to an executive agency an initial challenge to the inclusion or exclusion of an activity within 30 calendar days after publication of OMB's **Federal Register** notice stating that the inventory is available. The challenge must set forth the activity being challenged with as much specificity as possible, and the reasons for the interested party's belief that the particular activity should be reclassified as inherently Governmental (and therefore be deleted from the inventory) or as commercial (and therefore be added to the inventory) in accordance with OFPP Policy Letter 92–1 on inherently Governmental functions (see Appendix 5) or as established by precedent (such as when other agencies have contracted for the activity or undergone competitions for this or similar activities).

4. The agency head may delegate the responsibility to designate the appropriate official(s) to receive and decide the initial challenges. As mandated by the FAIR Act, the deciding official must decide the initial challenge and transmit to the interested party a written notification of the decision within 28 calendar days of receiving the challenge. The notification must include a discussion of the rationale for the decision and, if the decision is adverse, an explanation of the party's right to file an appeal.

5. An interested party may appeal an adverse decision to an initial challenge within 10 working days after receiving the written notification of the decision. The agency head may delegate the responsibility to receive and decide appeals to the official identified in paragraph 9.a of the Circular (or an equivalent senior policy official), without further delegation. Within 10 working days of receipt of the appeal, the official must decide the appeal and transmit to the interested party a written notification of the decision together with a discussion of the rationale for the decision. The agency must also transmit to OMB and the Congress a copy of any changes to the inventory that result from this process, make the changes available to the public and publish a notice of public availability in the **Federal Register**.''

**''H. Agency Review and Use of Inventory**

Section 2(d) of the FAIR Act requires that each agency, within a reasonable time after the publication of the notice that its inventories are publicly available, review the activities on the detailed commercial activities inventory. Agencies will report to OMB on this process as part of the Report on Agency Management of Commercial Activities required under Paragraph I, below. In addition, Section 2(d)–(e) of the FAIR Act provides that, each time the head of the executive agency considers contracting with a private-sector source for the performance of an activity included on the inventory, the agency must use a competitive process to select the source and must ensure that, when a cost comparison is used or otherwise required for the comparison of costs, all costs are considered and the costs considered are realistic and fair. In carrying out these requirements, agencies must rely on the guidance contained in Circular A–76 and this Supplemental Handbook to determine if cost comparisons are required and what competitive method is appropriate. All competitive costs of in-house and contract performance are included in the cost comparison, when such comparison is required, including the costs of quality assurance, technical monitoring, liability insurance, retirement benefits, disability benefits and overhead that may be allocated to the function under study or may otherwise be expected to change as a result of changing the method of performance.''

**''I. Annual Report on Agency Management of Commercial Activities**

As part of ongoing agency responsibility to manage their performance of commercial activities and ongoing OMB oversight, OMB will require agencies to report annually on such management. The content of the reports is likely to vary depending upon the progress made by each agency in reviewing their inventory and on the experience OMB gains from the first round of inventory submissions, review, challenges and appeals mandated by the FAIR Act. OMB anticipates issuing subsequent guidance if it determines that supplemental reports or other information is needed for future inventory submissions to assure that agencies have

correctly implemented all of the provisions of the FAIR Act and taken advantage of the management information inherent in the detailed Commercial Activities Inventory.''

**Attachment 2.—Executive Office of the President, Office of Management and Budget, Washington, DC 20503**

August 4, 1983 (Revised 1999).

Circular No. A–76

To the Heads of Executive Departments and Establishments

Subject: Performance of Commercial Activities

1. *Purpose.* This Circular establishes Federal policy regarding the performance of commercial activities and implements the statutory requirements of the Federal Activities Inventory Reform Act of 1998, Public Law 105–270. The Supplement to this Circular sets forth the procedures for determining whether commercial activities should be performed under contract with commercial sources or in-house using Government facilities and personnel.

2. *Rescission.* OMB Circular No. A–76 (Revised), dated March 29, 1979; and Transmittal Memoranda 1 through 14 and 16 through 18.

3. *Authority.* The Budget and Accounting Act of 1921 (31 U.S.C. 1 *et seq.*), The Office of Federal Procurement Policy Act Amendments of 1979. (41 U.S.C. 401 *et seq.*), and The Federal Activities Inventory Reform Act of 1998. (P. L. 105–270).

4. *Background.*

a. In the process of governing, the Government should not compete with its citizens. The competitive enterprise system, characterized by individual freedom and initiative, is the primary source of national economic strength. In recognition of this principle, it has been and continues to be the general policy of the Government to rely on commercial sources to supply the products and services the Government needs.

b. This national policy was promulgated through Bureau of the Budget Bulletins issued in 1955, 1957 and 1960. OMB Circular No. A–76 was issued in 1966. The Circular was previously revised in 1967, 1979, and 1983. The Supplement (Revised Supplemental Handbook) was previously revised in March 1996 (Transmittal Memorandum 15).

5. *Policy.* It is the policy of the United States Government to:

a. *Achieve Economy and Enhance Productivity.* Competition enhances quality, economy, and productivity. Whenever commercial sector performance of a Government operated commercial activity is permissible, in accordance with this Circular and its Supplement, comparison of the cost of contracting and the cost of in-house performance shall be performed to determine who will do the work. When conducting cost comparisons, agencies must ensure that all costs are considered and that these costs are realistic and fair.

b. *Retain Governmental Functions In-House.* Certain functions are inherently Governmental in nature, being so intimately related to the public interest as to mandate performance only by Federal employees. These functions are not in competition with the commercial sector. Therefore, these functions shall be performed by Government employees.

c. *Rely on the Commercial Sector.* The Federal Government shall rely on commercially available sources to provide commercial products and services. In accordance with the provisions of this Circular and its Supplement, the Government shall not start or carry on any activity to provide a commercial product or service if the product or service can be procured more economically from a commercial source.

6. *Definitions.* For purposes of this Circular:

a. A *commercial activity* is one which is operated by a Federal executive agency and which provides a product or service that could be obtained from a commercial source. Activities that meet the definition of an inherently Governmental function provided below are not commercial activities. A representative list of commercial activities is provided in Attachment A. A commercial activity also may be part of an organization or a type of work that is separable from other functions or activities and is suitable for performance by contract.

b. A *conversion to contract* is the changeover of an activity from Government performance to performance under contract by a commercial source.

c. A *conversion to in-house* is the changeover of an activity from performance under contract to Government performance.

d. A *commercial source* is a business or other non-Federal activity located in the United States, its territories and possessions, the District of Columbia or the Commonwealth of Puerto Rico, which provides a commercial product or service.

e. An *inherently Governmental function* is a function which is so intimately related to the public interest as to mandate performance by Government employees. Consistent with the definitions provided in the Federal Activities Inventory Reform Act of 1998 and OFPP Policy Letter 92–1, these functions include those activities which require either the exercise of discretion in applying Government authority or the use of value judgment in making decisions for the Government. Services or products in support of inherently Governmental functions, such as those listed in Attachment A, are commercial activities and are normally subject to this Circular. Inherently Governmental functions normally fall into two categories:

(1) The *act of governing;* i.e., the discretionary exercise of Government authority. Examples include criminal investigations, prosecutions and other judicial functions; management of Government programs requiring value judgments, as in direction of the national defense; management and direction of the Armed Services; activities performed exclusively by military personnel who are subject to deployment in a combat, combat support or combat service support role; conduct of foreign relations; selection of program priorities; direction of Federal employees; regulation of the use of space, oceans, navigable rivers and other natural resources; direction of intelligence and counter-intelligence operations; and regulation of industry and commerce, including food and drugs.

(2) *Monetary transactions and entitlements,* such as tax collection and revenue disbursements; control of the Treasury accounts and money supply; and the administration of public trusts.

f. A *cost comparison* is the process of developing an estimate of the cost of Government performance of a commercial activity and comparing it, in accordance with the requirements of the Supplement, to the cost to the Government for contract performance of the activity.

g. *Directly affected parties* are Federal employees and their representative organizations and bidders or offerors on the instant solicitation.

h. *Interested parties* for purposes of challenging the contents of an agency's Commercial Activities Inventory under the Federal Activities Inventory Reform Act of 1998 are:

(1) A private sector source that (A) is an actual or prospective offeror for any contract or other form of agreement to perform the activity; and (B) has a direct economic interest in performing the activity that would be adversely affected by a determination not to procure the performance of the activity from a private sector source.

(2) A representative of any business or professional association that includes within its membership private sector sources referred to in (1) above.

(3) An officer or employee of an organization within an executive agency that is an actual or prospective offeror to perform the activity.

(4) The head of any labor organization referred to in section 7103(a)(4) of Title 5, United States Code that includes within its membership officers or employees of an organization referred to in (3) above.

7. *Scope.*

a. Unless otherwise provided by law, this Circular and its Supplement shall apply to all executive agencies and shall provide administrative direction to heads of agencies.

b. This Circular and its Supplement apply to printing and binding only in those agencies or departments which are exempted by law from the provisions of Title 44 of the U.S. Code.

c. This Circular and its Supplement shall not:

(1) Be applicable when contrary to law, Executive Orders, or any treaty or international agreement;

(2) Apply to inherently Governmental functions as defined in paragraph 6.e.;

(3) Apply to the Department of Defense in times of a declared war or military mobilization;

(4) Provide authority to enter into contracts;

(5) Authorize contracts which establish an employer-employee relationship between the Government and contractor employees. An employer-employee relationship involves close, continual supervision of individual contractor employees by Government employees, as distinguished from general oversight of contractor operations. However,

limited and necessary interaction between Government employees and contractor employees, particularly during the transition period of conversion to contract, does not establish an employer-employee relationship.

(6) Be used to justify conversion to contract solely to avoid personnel ceilings or salary limitations;

(7) Apply to the conduct of research and development. However, severable in-house commercial activities in support of research and development, such as those listed in Attachment A, are normally subject to this Circular and its Supplement; or

(8) Establish and shall not be construed to create any substantive or procedural basis for anyone to challenge any agency action or inaction on the basis that such action or inaction was not in accordance with this Circular, except as specifically set forth in Part 1, Chapter 3, paragraph K of the Supplement, ''Appeals of Cost Comparison Decisions'' and as set forth in Appendix 2, Paragraph G, consistent with Section 3 of the Federal Activities Inventory Reform Act of 1998.

d. The requirements of the Federal Activities Inventory Reform Act of 1998 apply to the following executive agencies:

(1) An executive department named in 5 USC 101,

(2) A military department named in 5 USC 102, and

(3) An independent establishment as defined in 5 USC 104.

e. The requirements of the Federal Activities Inventory Reform Act of 1998 do not apply to the following entities or activities:

(1) The General Accounting Office,

(2) A Government corporation or a Government controlled corporation as defined in 5 USC 103,

(3) A non-appropriated funds instrumentality if all of its employees are referred to in 5 USC 2105(c), or

(4) Depot-level maintenance and repair of the Department of Defense as defined in 10 USC 2460.

8. *Government Performance of a Commercial Activity*. Government performance of a commercial activity is authorized under any of the following conditions:

a. *No Satisfactory Commercial Source Available.* Either no commercial source is capable of providing the needed product or service, or use of such a source would cause unacceptable delay or disruption of an essential program. Findings shall be supported as follows:

(1) If the finding is that no commercial source is capable of providing the needed product or service, the efforts made to find commercial sources must be documented and made available to the public upon request. These efforts shall include, in addition to consideration of preferential procurement programs (see Part I, Chapter 1, paragraph C of the Supplement) at least three notices describing the requirement in the *Commerce Business Daily* over a 90-day period or, in cases of *bona fide* urgency, two notices over a 30-day period. Specifications and requirements in the solicitation shall not be unduly restrictive and shall not exceed those required of in-house Government personnel or operations.

(2) If the finding is that a commercial source would cause unacceptable delay or disruption of an agency program, a written explanation, approved by the assistant secretary or designee in paragraph 9.a. of the Circular, must show the specific impact on an agency mission in terms of cost and performance. Urgency alone is not adequate reason to continue in-house operation of a commercial activity. Temporary disruption resulting from conversion to contract is not sufficient support for such a finding, nor is the possibility of a strike by contract employees. If the commercial activity has ever been performed by contract, an explanation of how the instant circumstances differ must be documented. These decisions must be made available to the public upon request.

(3) Activities may not be justified for in-house performance solely on the basis that the activity involves or supports a classified program or the activity is required to perform an agency's basic mission.

b. *National Defense.*

(1) The Secretary of Defense shall establish criteria for determining when Government performance of a commercial activity is required for national defense reasons. Such criteria shall be furnished to OMB, upon request.

(2) Only the Secretary of Defense or his designee has the authority to exempt commercial activities for national defense reasons.

c. *Patient Care*. Commercial activities performed at hospitals operated by the Government shall be retained in-house if the agency head, in consultation with the agency's chief medical director, determines that in-house performance would be in the best interests of direct patient care.

d. *Lower cost*. Government performance of a commercial activity is authorized if a cost comparison prepared in accordance with the Supplement demonstrates that the Government is operating or can operate the activity on an ongoing basis at an estimated lower cost than a qualified commercial source.

9. *Action Requirements.* To ensure that the provisions of this Circular and its Supplement are followed, each agency head shall:

a. Designate an official at the assistant secretary or equivalent level and officials at a comparable level in major component organizations to have responsibility for implementation of this Circular and its Supplement within the agency.

b. Establish one or more offices as central points of contact to carry out implementation. These offices shall have access to all documents and data pertinent to actions taken under the Circular and its Supplement and will respond in a timely manner to all requests concerning inventories, schedules, reviews, results of cost comparisons and cost comparison data.

c. Be guided by Federal Acquisition Regulation (FAR) Subpart 24.2 (Freedom of Information Act) in considering requests for information.

d. Implement this Circular and its Supplement with a minimum of internal instructions. Cost comparisons shall not be delayed pending issuance of such instructions.

e. Ensure the reviews of all existing in-house commercial activities are completed within a reasonable time in accordance with the Federal Activities Inventory Reform Act of 1998 and the Supplement.

10. *Annual Reporting Requirement.* As required by the Federal Activities Inventory Reform Act of 1998 and Appendix 2 of the Supplement, no later than June 30 of each year, agencies shall submit to OMB a Commercial Activities Inventory and any supplemental information requested by OMB. After review and consultation by OMB, agencies will transmit a copy of the Commercial Activities Inventory to Congress and make the contents of the Inventory available to the public. Agencies will follow the process provided in the Supplement for interested parties to challenge (and appeal) the contents of the inventory.

11. *OMB Responsibility and Contact Point.* All questions or inquiries should be submitted to the Office of Management and Budget, Room 6002 NEOB, Washington, DC 20503. Telephone number (202) 395–6104, FAX (202) 395–7230.

12. *Effective Date.* This Circular and the changes to its Supplement are effective immediately.

## Attachment A:—OMB Circular No. A–76, Examples of Commercial Activities

*Audiovisual Products and Services*

Photography (still, movie, aerial, etc.)
Photographic processing (developing, printing, enlarging, etc.)
Film and videotape production (script writing, direction, animation, editing, acting, etc.)
Microfilming and other microforms
Art and graphics services
Distribution of audiovisual materials
Reproduction and duplication of audiovisual products
Audiovisual facility management and operation
Maintenance of audiovisual equipment

*Automatic Data Processing*

ADP services—batch processing, time-sharing, facility management, etc.
Programming and systems analysis, design, development, and simulation
Key punching, data entry, transmission, and teleprocessing services
Systems engineering and installation
Equipment installation, operation, and maintenance

*Food Services*

Operation of cafeterias, mess halls, kitchens, bakeries, dairies, and commissaries
Vending machines
Ice and water

*Health Services*

Surgical, medical, dental, and psychiatric care
Hospitalization, outpatient, and nursing care
Physical examinations
Eye and hearing examinations and manufacturing and fitting glasses and hearing aids

Medical and dental laboratories
Dispensaries
Preventive medicine
Dietary services
Veterinary services

*Industrial Shops and Services*

Machine, carpentry, electrical, plumbing, painting, and other shops
Industrial gas production and recharging
Equipment and instrument fabrication, repair and calibration
Plumbing, heating, electrical, and air conditioning services, including repair
Fire protection and prevention services
Custodial and janitorial services
Refuse collection and processing

*Maintenance, Overhaul, Repair, and Testing*

Aircraft and aircraft components
Ships, boats, and components
Motor vehicles
Combat vehicles
Railway systems
Electronic equipment and systems
Weapons and weapon systems
Medical and dental equipment
Office furniture and equipment
Industrial plant equipment
Photographic equipment
Space systems

*Management Support Services*

Advertising and public relations services
Financial and payroll services
Debt collection

*Manufacturing, Fabrication, Processing, Testing, and Packaging*

Ordnance equipment
Clothing and fabric products
Liquid, gaseous, and chemical products
Lumber products
Communications and electronics equipment
Rubber and plastic products
Optical and related products
Sheet metal and foundry products
Machined products
Construction materials
Test and instrumentation equipment

*Office and Administrative Services*

Library operations
Stenographic recording and transcribing
Word processing/data entry/typing services
Mail/messenger
Translation
Management information systems, products and distribution
Financial auditing and services
Compliance auditing
Court reporting
Material management
Supply services

*Other Services*

Laundry and dry cleaning
Mapping and charting
Architect and engineer services
Geological surveys
Cataloging
Training—academic, technical, vocational, and specialized Operation of utility systems (power, gas, water steam, and sewage)
Laboratory testing services

*Printing and Reproduction*

Facility management and operation
Printing and binding—where the agency or department is exempted from the provisions of Title 44 of the U.S. Code
Reproduction, copying, and duplication
Blueprinting

*Real Property*

Design, engineering, construction, modification, repair, and maintenance of buildings and structures; building mechanical and electrical equipment and systems; elevators; escalators; moving walks
Construction, alteration, repair, and maintenance of roads and other surfaced areas
Landscaping, drainage, mowing and care of grounds
Dredging of waterways

*Security*

Guard and protective services
Systems engineering, installation, and maintenance of security systems and individual privacy systems
Forensic laboratories

*Special Studies and Analyses*

Cost benefit analyses
Statistical analyses
Scientific data studies
Regulatory studies
Defense, education, energy studies
Legal/litigation studies
Management studies

*Systems Engineering, Installation, Operation, Maintenance, and Testing*

Communications systems—voice, message, data, radio, wire, microwave, and satellite
Missile ranges
Satellite tracking and data acquisition
Radar detection and tracking
Television systems—studio and transmission equipment, distribution systems, receivers, antennas, etc.
Recreational areas
Bulk storage facilities

*Transportation*

Operation of motor pools
Bus service
Vehicle operation and maintenance
Air, water, and land transportation of people and things
Trucking and hauling

**Appendix—Summary of Comments Received**

OMB received 82 responses to its March 1, 1999, **Federal Register** request for comments: 10 Federal agencies; 61 industry or trade groups, and 8 employee organizations responded, in addition to 4 letters from members of Congress. A discussion of the significant comments, and OMB's responses (including resulting changes that have been made to Circular A–76 and its Supplemental Handbook), is provided below.

**1. The Development and Submission of the Commercial Activities Inventory**

OMB received a number of comments regarding the proposed revisions to Appendix 2 of the Supplemental Handbook that address the requirement in Section 2(a) of the FAIR Act that agencies develop and submit to OMB, by June 30th of each year, ''a list of activities performed by Federal Government sources for the executive agency that, in the judgment of the head of the executive agency, are not inherently Governmental functions.''

a. *Comment:* One agency commenter stated that it would be burdensome for the agency to include in the agency's inventory the name of a Federal employee with respect to each listed commercial activity.

*Response:* This data element is specifically required by Section 2(a)(3) of the FAIR Act itself.

b. *Comment:* Several commenters asked for changes to the data elements to prevent any implication that agency savings could only be achieved by ''outsourcing'' (converting work from in-house to contract performance) but not by ''insourcing'' (converting work from contract to in-house performance). Specifically, the commenters asked that OMB delete the commercial activity data element for ''CIV/FTE Savings'' (item g, of the Supplemental Handbook's Appendix 2). The commenters also asked for savings information to be collected when a conversion is from contract to in-house performance. Finally, the commenters asked that agencies provide, as part of the data that is collected pursuant to paragraph ''F'' in Appendix 2 of the Handbook, aggregate data on the numbers of contractor employees performing work for the agency.

*Response:* The cost-comparison process under Circular A–76 provides a level playing field for agencies to determine whether savings would result from a conversion of work, whether that conversion is from in-house to contract performance or from contract to in-house performance. Moreover, the cost-comparison process can result in savings even if no conversion occurs. The commercial activity data element for ''CIV/FTE Savings'' reflects the number of civilian FTE saved as a result of conducting a cost comparison, whether the function is retained in-house or converted to contract. This data element, therefore, is not meant to suggest that savings can only occur through outsourcing.

With respect to the request for additional information on savings that result from conversions from contract to in-house performance, the inventories will include an additional data element (a ''reason code'') to identify those commercial activities that are ''being performed in-house as a result of a cost comparison resulting in a decision to convert from contract to in-house performance'' (new reason code ''I''). A corresponding change has been made to limit reason code ''E'' to functions retained in-house as a result of a cost comparison. The request for information on the aggregate number of agency contractor employees is beyond the scope of the FAIR Act, which is limited to performance of commercial activities by Federal employees.

c. *Comment:* Several commenters suggested that additional ''reason codes'' be included that would identify commercial functions that, in the agency's view, should not be subject to conversion to contract because of its need for a cadre of highly

skilled employees, in a specialized technical or scientific development area, to ensure that a minimum in-house capability (''core capability'') in the area is maintained.

*Response:* The inclusion of a function on the agency's inventory of commercial activities does not mean that the agency is required to compete the function for outsourcing. Rather, the FAIR Act in Section 2(d) requires each agency to review its inventory of commercial activities. Presumably, this review would include consideration of outsourcing, consolidation, privatization, other reinvention alternatives or maintaining the *status quo.* Not all commercial activities performed by Federal employees should be performed by the private sector, though all such activities should be inventoried under the provisions of the FAIR Act and Circular A–76. The decision as to which commercial functions represent ''core capabilities,'' and thus should be retained in-house, remains with the agency head. Accordingly, a specific reason code for ''core capability'' was not added to the inventory.

d. *Comment:* A number of commenters requested that the inventory be expanded to include inherently Governmental positions, along the lines of the information requested of the agencies on May 12, 1998 (Memorandum M–98–10, ''Inventory of Commercial Activities'').

*Response:* The FAIR Act requires agencies to develop an inventory of the agency activities that ''are not inherently Governmental functions.'' The FAIR Act does not request any information on inherently Governmental activities; its focus is limited to commercial activities.

As part of its pre-FAIR Act oversight function to evaluate how agencies determine what functions performed by Federal employees are classified as commercial, OMB requested summary information from agencies that also included functions they classified as not commercial (i.e., inherently Governmental functions). When OMB conducts its FAIR Act review and consultation on the Commercial Activities Inventory submissions, it will do so in light of the information gained from its review of the agencies' responses to OMB's Memorandum M–98–10.

e. *Comment:* Several commenters expressed their views as to which positions in the Department of Defense should be designated as inherently Governmental and, therefore, excluded from the Commercial Activities Inventory.

*Response:* Under the FAIR Act, the agency head makes the determination of which activities are to be excluded from the Commercial Activities Inventory because they are ''inherently Governmental'', as defined by the Act and existing guidance. Part of OMB's review of the agencies' submissions will be to review these judgments, and to consult with the agencies on them.

f. *Comment:* One commenter interpreted the Act's use of the term ''full-time employees (or its equivalent)'' to mean that the Act applied only to civilian employees and, thus, to exclude military positions from the Act's Commercial Activities Inventory requirement.

*Response:* All activities of the Federal Government that ''are not inherently Governmental'' are to be inventoried under the FAIR Act. This requirement is not limited to civilian employees. Accordingly, military personnel performing commercial activities are subject to the FAIR Act and must be inventoried. For clarity, the data element FTE described in Appendix 2, paragraph ''C'' has been clarified to include ''authorized full-time employees or FTE (as applicable).''

g. *Comment:* Several commenters stated that agencies should, in accordance with the principles of Executive Order 12871 (''Labor-Management Partnerships''), permit employee involvement in the development of the agencies' inventories of commercial activities.

*Response:* Executive Order 12871 does apply. Agencies should seek employee input in the development of the Commercial Activities Inventory, as appropriate, and the guidance has been revised to say so. It remains up to the agency head to make the determination whether a function is commercial or inherently Governmental in nature. The FAIR Act also provides that Federal employees and their representatives are ''interested parties'' who may challenge the contents of the inventory.

**2. OMB's Review of the Commercial Activities Inventory and the Availability of the Inventories to the Public**

a. *Comment:* Under Section 2(b) of the FAIR Act, OMB ''shall review the executive agency's list for a fiscal year and consult with the head of the executive agency regarding the contents of the final list for that fiscal year.'' When that review and consultation is completed, the inventory is then made available to the public under Section 2(c), with a notice of availability published by OMB in the **Federal Register**. Several commenters expressed concern that the FAIR Act did not establish a timetable for OMB's review of agency inventories or their availability for public review.

*Response:* OMB intends to complete its review and consultation in a timely manner. Since this is a new process, OMB cannot set a firm timetable at this time. However, it is anticipated that the review and consultation should take about 60 days after OMB receives the agency inventory and any requested supplemental information. The notice of the inventory's public availability would be published within a few days thereafter.

b. *Comment:* Several commenters stated that, if an employee's activities are considered commercial and are therefore included on the agency's list, the Handbook should require timely notification to those employees.

*Response:* In accordance with Section 2(c) of the FAIR Act, OMB will publish a notice in the **Federal Register** when the inventories are available to the public (after the completion of OMB's review-and-consultation). The FAIR Act and the revised Handbook require each agency to make its inventory available to the public, which, of course, includes its employees and their representatives.

**3. ''Competition'' and ''Cost Comparison'' Provisions**

a. *Comment:* Section 2(d) of the FAIR Act provides that, ''[w]ithin a reasonable time after'' an agency's inventory has been made available to the public, the head of the agency ''shall review the activities on the list.'' Several commenters recommended that OMB define what constitutes a ''reasonable time'' for the agency to review its inventory of commercial activities. One commenter suggested a time frame of 1 to 2 years, depending on the number of commercial activities on an agency's inventory. One commenter also suggested that agencies should be required to publish for public comment their timetable for reviewing the inventory.

*Response:* The FAIR Act does not provide a definition of the phrase ''reasonable time.'' OMB believes that agencies should conduct such review in conjunction with their larger ongoing review of all functions for possible re-engineering, privatization, consolidation or other reinvention under the NPR and the Government Performance and Results Act. As part of its ongoing oversight of agency management of commercial activities performance, OMB will now require agencies to provide annual reports to OMB on the FAIR Act process, including their review and use of the Commercial Activities Inventory.

b. *Comment:* Several commenters took issue with the statement in the preamble to the proposal that ''the FAIR Act requires agencies * * * to review the activities on the list for possible performance by the private sector.'' (64 FR 10031) They pointed out that Section 2(d) of the FAIR Act does not specify a particular purpose for the review.

*Response:* The FAIR Act inventory provides information that can assist the agency in considering a wide variety of options for how to satisfy its commercial activity needs that are performed by Federal employees. These options include both the possibility of the private sector fulfilling the need (through such actions as direct conversion, competition, and privatization), as well as continued agency reliance on Federal employees (with, perhaps, improvements that can flow from process changes suggested in the competition).

c. *Comment:* Several commenters interpreted Section 2(d) of the FAIR Act as permitting the direct conversion, without a cost comparison, of any commercial activity on the list (of any size or type) to performance by the private sector. In their view, FAIR does not preclude an agency from utilizing any of the processes allowed by law, including private-private competition as prescribed in FAR Part 8, 15 and 36. Other commenters expressed concern that the proposed revisions to the Supplemental Handbook required public-private cost comparisons in situations where such cost comparisons are not presently required.

*Response:* The FAIR Act envisions the use of competition to select a source when an agency considers contracting with a private sector source for performance of an activity on the list, but the law did not modify existing policies regarding the conduct of competitions. Existing guidance provides guidelines for determining when cost

comparisons are required and, if required, how they are conducted.

d. *Comment:* Several commenters viewed the FAIR Act as prohibiting an agency from converting commercial work from contract to in-house performance under any condition.

*Response:* The FAIR Act addresses only inventories of commercial activities that are performed by Federal employees. It does not address commercial activities that are performed through contract and, therefore, does not address the conversion of contract work to in-house performance.

e. *Comment:* Several commenters stated their view that the FAIR Act requires substantial changes to the Circular A–76 costing rules so that they incorporate ''all costs,'' and in particular the costs listed in the parenthetical in Section 2(e) (i.e., the costs of quality assurance, technical monitoring of the performance of such function, liability insurance, employee retirement and disability benefits, and all other overhead costs).

*Response:* Existing guidance already requires agencies, in conducting cost comparisons, to consider all the fair and reasonable costs addressed in Section 2(e) of the FAIR Act. (See 64 FR 10032). The Supplemental Handbook requires consideration of all costs to the taxpayer that could be expected to change as a result of a conversion to or from performance by in-house or contract employees.

f. *Comment:* Several commenters suggested that public-private competitions must be based on ''best-value'' principles. They were concerned that OMB's proposed guidance relies on ''cost-only competitions,'' thus ignoring the potential use of the best-value approach in the cost comparison process.

*Response:* Existing guidance is not limited to ''cost-only competitions.'' It also allows for best value tradeoffs between cost and other factors. The competitive-source selection process outlined at Part 1, Chapter 3, paragraph H of the Supplemental Handbook permits use of the best value source selection approach in the context of public-private competition.

**4. The FAIR Act ''Challenge'' Process**

a. *Comment:* Section 3 of the FAIR Act provides for an administrative ''challenge'' process under which ''interested parties'' may challenge the agency's omission, or inclusion, of an activity on its FAIR Act inventory. Under this process, an ''initial decision'' is rendered by an agency official designated by the agency head. The interested party may then file an appeal of an adverse decision to the agency head. Several commenters suggested that, in the case of an appeal, the agency should publish its initial decision and the appeal in the **Federal Register** and request comments of other interested parties so that they may be considered by the agency head. It was further suggested that the final appeal should be reviewed by OMB, the Small Business Administration, the General Accounting Office, and relevant congressional appropriations and authorization committee staff.

*Response:* The requested procedures would go far beyond the FAIR Act. In addition, since Section 3 provides the agency head with 10 days to decide an appeal, there is not sufficient time for the agency to solicit, receive, and consider public comments.

**5. Implementing the FAIR Act Via Revisions to A–76 & the Supplemental Handbook**

*Comment:* A number of commenters suggested that OMB use an alternative vehicle to implement the FAIR Act guidance, such as issuing regulations or a separate circular, rather than making changes to the existing guidance on the performance of commercial activities contained in OMB Circular A–76 and its Supplemental Handbook.

*Response:* Circulars are a well-established vehicle for directing agencies on management of their activities. Circular A–76 already establishes the broad principles and the Revised Supplemental Handbook provides the specific definitions and direction on management of commercial activities, including the inventory and other activities that are codified by the FAIR Act. For this reason, it makes much more sense to revise the existing guidance than to develop a new circular. More importantly, however, OMB wanted to provide the agencies with prompt and clear guidance on how to implement the Act within the short time frame available and without confusion or wasted effort on the part of the agencies. Without revising the Handbook to conform to the FAIR Act, repetitive and competing guidance would exist in a number of areas. For example, the Handbook already requires agencies to develop an annual inventory of their commercial activities and specifies what information (data elements) is to be included. It also contains guidance for when and how agencies are to conduct cost comparisons and what costs should be included. These are all specific areas addressed by the FAIR Act. Ironically, the confusion that could result from issuing a new circular might slow agencies down rather than speeding them up.

Revising the Circular and Supplemental Handbook so that they conform to the FAIR Act is the best way to provide agencies with clear and prompt guidance on how to implement the Act.

[FR Doc. 99–16129 Filed 6–23–99; 8:45 am]
BILLING CODE 3110–01–P

## RAILROAD RETIREMENT BOARD

### Proposed Data Collection Available for Public Comment and Recommendations

**SUMMARY:** In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

*Comments are invited on:* (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

*Title and purpose of information collection:* Statement of Authority to Act for Employee; OMB 3220–0034.

Under Section 5(a) of the Railroad Unemployment Insurance Act (RUIA), claims for benefits are to be made in accordance with such regulations as the Railroad Retirement Board (RRB) shall prescribe. The provisions for claiming sickness benefits are provided by Section 2 of the RUIA are prescribed in 20 CFR 335.2. Included in these provisions is the RRB's acceptance of forms executed by someone else on behalf of an employee if the RRB is satisfied that the employee is sick or injured to the extent of being unable to sign forms.

The RRB utilizes Form SI–10, Statement Authority to Act for Employee, to provide the means for an individual apply for authority to act on behalf of an incapacitated employee and also to obtain the information necessary to determine that the delegation should be made. Part I of the form is completed by the applicant for the authority and Part II is completed by the employee's doctor. One response is requested of each respondent. Completion is required to obtain benefits. The RRB proposes no changes to Form SI–10.

The estimated annual respondent burden is as follows:

*Form:* SI–10.

*Estimate of Annual Responses:* 400.

*Estimated Completion Time:* 6 minutes.

*Total Burden House:* 40.

**ADDITIONAL INFORMATION OR COMMENTS:** To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

**Chuck Mierzwa,**

*Clearance Officer.*

[FR Doc. 99–16121 Filed 6–23–99; 8:45 am]
BILLING CODE 7905–01–M

## RAILROAD RETIREMENT BOARD

### Sunshine Act, Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on June 30, 1999, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) Occupational Disability—FCE Protocols.

(2) Vested Dual Benefit Project.

(3) Employer Status Determination—Savannah State Docks Railroad Company.

(4) Business Cards.

(5) Electronic and Information Technology Survey.

(6) Request to Fill the Director of Equal Opportunity Position.

(7) Year 2000 Issues.

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board. Phone No. 312–751–4920.

Dated: June 21, 1999.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 99–16194 Filed 6–22–99; 1:47 pm]

**BILLING CODE 7905–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 1–4199]**

### Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Bestfoods, Common Stock, Par Value $.25)

June 18, 1999.

Bestfoods (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security has been listed for trading on the CHX and the New York Stock Exchange (''NYSE''). The Company, having considered all the direct and indirect costs arising from maintaining these multiple listings, determined to withdraw the Security from listing on the CHX and maintain its listing on the NYSE.

The Company has complied with the rules of the CHX by filing with the Exchange a certified copy of resolutions adopted by the Company's Board of Directors authorizing withdrawal of its Security from listing on the CHX as well as correspondence setting forth in detail to the Exchange the reasons for such proposed withdrawal, and the facts in support thereof.

The Exchange has informed the company that it has no objection to the withdrawal of the Company's Security from listing on the Exchange.

This application relates solely to the withdrawal of the Security by the Company from listing on the CHX and shall have no effect upon the continued listing of such Security on the NYSE. By reason of Section 12(b) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and with the NYSE.

Any interested person may, on or before July 9, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 99–16083 Filed 6–23–99; 8:45 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

### Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Premier Bancshares, Inc., Common Stock, Par Value $1.00 Per Share) File No. 1–12625

June 18, 1999.

Premier Bancshares, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security of the Company has been listed for trading on the Amex and, pursuant to a Registration Statement on Form 8–A which became effective on May 27, 1999, on the New York Stock Exchange, Inc. (''NYSE''). Trading of the Company's Security on the NYSE commenced at the opening of business on June 1, 1999.

The Company has complied with Rule 18 of the Amex by filing with the Exchange a certified copy of preambles and resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Security from listing on the Amex and by setting from in detail to the Exchange the reasons for the proposed withdrawal, and the facts in support thereof. In making the determination to withdraw the Security from listing on the Amex in conjunction with its being admitted to trading to the NYSE, the Company sought to provide its Security with enhanced market exposure and institutional support it would receive from listing on the NYSE, as well as to avoid the direct and indirect costs which would have resulted from the simultaneous listing of the Security on both the Amex and the NYSE. The Amex has informed the Company that it has no objection to the withdrawal of the Company's Security from listing on the Exchange.

The Company's application relates solely to the withdrawal from listing of the Company's Security from the Amex and shall have no effect upon the continued listing of the Security on the NYSE. By reason of Section 12(b) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and the NYSE.

Any interested person may, on or before July 8, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless

the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 99–16040 Filed 6–23–99; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

### Issuer Delisting; Notice of Application To Withdraw from Listing and Registration; (Premier Capital Trust I, Cumulative Trust Preferred Securities) File No. 1–12625–02

June 18, 1999.

Premier Capital Trust I (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security of the Company has been listed for trading on the Amex and, pursuant to a Registration Statement on Form 8–A which became effective on May 28, 1999, on the New York Stock Exchange, Inc. (''NYSE''). Trading of the Company's Security on the NYSE commenced at the opening of business on June 1, 1999.

The Company has complied with Rule 18 of the Amex by filing with the Exchange a certified copy of premables and resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Security from listing on the Amex and by setting forth in detail to the Exchange the reasons for the proposed withdrawal, and the facts in support thereof. In making the determination to withdraw the Security from listing on the Amex in conjunction with its being admitted to trading on the NYSE, the Company sought to provide its Security with enhanced market exposure and institutional support it would receive from listing on the NYSE, as well as to avoid the direct and indirect costs which would have resulted from the simultaneous listing of the Security on both the Amex and the NYSE. The Amex has informed the Company that it has no objection to the withdrawal of the Company's Security from listing on the Exchange.

The Company's application relates solely to the withdrawal from listing of the Company's Security from the Amex and shall have no effect upon the continued listing of the Security on the NYSE. By reason of Section 12(b) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and the NYSE.

Any interested person may, on or before July 8, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 99–16041 Filed 6–23–99; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35–27038]**

### Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

June 18, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the applications(s) and/or declaration(s) for complete statements of the proposed transactions(s) summarized below. The application(s) and/or declarations(s) and any amendments is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the applications(s) and/or declaration(s) should submit their views in writing by July 13, 1999, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After July 13, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

*Allegheny Energy, Inc. et al. (70–9483)*

Allegheny Energy, Inc. (''Allegheny''), a registered holding company, AYP Energy, Inc. (''AYP Energy''),[1] a wholly owned nonutility subsidiary of Allegheny, and Allegheny Power Service Corporation (''APSC''), a service subsidiary of Allegheny, all located at 10435 Downsville Pike, Hagerstown, MD 21740–1766, and, West Penn Power Company (''West Penn''),[2] a wholly owned public utility electric subsidiary of Allegheny, located at 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601, (collectively, ''Applicants''), have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and rules 45, 46, 54, 90 and 91 under the Act.

In August 1997, West Penn was required to file a restructuring plan with the Pennsylvania Public Utility Commission (''PUC''), which, among other things, unbundled generation from transmission and distribution. The restructuring plan was contested and became the subject of hearings. These hearings resulted in a settlement that the Pennsylvania PUC approved on November 19, 1998 (''Settlement Agreement''). The settlement authorized and provided state regulatory pre-approval for West Penn to transfer its generating assets to a new affiliate in the Allegheny system at net book value.

West Penn requests authorization to form and capitalize a single member limited liability corporation (''Energy

[1] AYP Energy owns a 50% interest in Unit No. 1 of the Ft. Martin Power Station located in Monongalia County, Maidsville, West Virginia. AYP Energy is a wholly owned utility subsidiary of AYP Capital, Inc., which is a wholly owned nonutility subsidiary of Allegheny.

[2] In addition to West Penn, the Monongahela Power Company (''Monongahela'') and the Potomac Edison Company (''Potomac Edison'') are direct, wholly owned public utility subsidiaries of Allegheny. West Penn, Potomac Edison and Monongahela jointly own Allegheny Generating Company (''AGC''), which owns a 40% undivided interest in a pumped-storage hydroelectric generating facility and related transmission facilities located in Bath County, Virginia (''Bath Project'').

Subsidiary'') as a wholly owned subsidiary and to acquire all of the limited liability interests in Energy Subsidiary. Further, West Penn proposes to transfer utility generating assets (''Generating Assets'') and other rights and obligations to Energy Subsidiary in exchange for cash and/or a promissory note, secured by a purchase money mortgage, in an amount not to exceed the Generating Assets' net book value of $990 million (''Promissory Notes''). Additionally, West Penn proposes to engage in the following transactions with Energy Subsidiary: transfer generation related assets and net liabilities and debt, including outstanding pollution control and solid waste disposal notes (collectively, ''Associated Liabilities''); make capital contributions (Allegheny may also make capital contributions to Energy Subsidiary);[3] transfer AGC shares; assign its rights to generation from the Bath Project, notes and/or obligations (collectively, ''Bath Project Rights and Obligations''); assign rights and responsibilities under joint-owner operating agreements for Ft. Martin Unit No. 1 (''Joint-Owner Operating Agreements''); and, assign rights to electric energy generated by Ohio Valley Electric Corporation (''OVEC'')[4] and obligations related to the OVEC Power Agreement (collectively, ''OVEC Agreements, Rights and Obligations'').

Applicants requests authorization to form and capitalize a wholly owned Subsidiary of Energy Subsidiary for the purpose of holding generating assets, rights, interests and related obligations (''GENCO''). Additionally, Applicants propose to transfer and assign from Energy Subsidiary to GENCO: Generating Assets; OVEC Agreements, Right and Obligations; Bath Project Rights and Obligations; service agreements with APSC (''Service Agreements''); Joint-Owner Operating Agreements; and, Associated Liabilities all in exchange for the limited liability interests in GENCO (collectively, ''Energy Subsidiary Assets'').[5] West Penn proposes to acquire the Energy Subsidiary Assets in exchange for the Promissory Notes.

AYP Energy proposes to transfer its assets to GENCO[6] in exchange for the assumption of AYP Energy's debt by GENCO; and assign AYP Energy's rights and responsibilities under the Joint-Owner Operating Agreement for Ft. Martin Unit No. 1 to GENCO.

Initially, Allegheny anticipates that Energy Subsidiary and GENCO will not have their own paid employees. Personnel employed by APSC, a service company approved by the Commission under section 13 of the Act will provide a wide range of services on an as-needed basis to those companies under Service Agreements entered into between each of those companies and APSC. The proposed Service Agreements will take effect upon Commission approval and will be similar in all material aspects to those service agreements which APSC has executed APSC will render services to Energy Subsidiary and GENCO in accordance with rules 90 and 91.

Applicants also seek authority to permit GENCO to obtain independent or parent-supported financing using various methods, including, but not limited to, bank financing and/or bank credit support, project financing, commercial paper programs, sales of secured or unsecured debt, notes debentures and issuances of equity, up to $500 million (''General Financing''), in addition to the Promissory Notes. Additionally, Allegheny seeks authority to make loans, guarantees and enter support agreements to and for GENCO and any other type of investments in and for GENCO as deemed necessary, through December 31, 2007, up to an aggregate of $900 million (''Loans, Guarantees and Investment Authority'') which would be in addition to the General Financing and Promissory Notes. Loans by Allegheny or West Penn to Energy Subsidiary will have interest rates and maturities that are designed to parallel Allegheny's or West Penn's, as the case may be, effective cost of capital.

West Penn also will enter into a leaseback agreement (''Leaseback Agreement''), through January 2, 2000, with GENCO for approximately one-third of the total electrical energy generating capacity of the Generating Assets. Allegheny's largest service territory is in Pennsylvania. West Penn is incorporated in Pennsylvania and its entire service territory is located within Pennsylvania. Pennsylvania has begun to restructure it electric markets under the state's Electricity Generation Customer Choice and Competition Act of 1996 (''Competition Act'').[7] The Competition Act allowed two-thirds of West Penn's generation load to choose its generation supplier beginning January 2, 1999. The remaining one-third will be permitted to choose its generation supplier beginning January 2, 2000. West Penn is obligated to continue to directly supply the generation needs of the remaining one-third customers until January 2, 2000. The Leaseback Agreement fulfills West Penn's service obligation.

Authorization is also requested for GENCO to enter into operating and other agreements, related to the Generating Assets, with West Penn for the operation of all other Generating Assets. Applicants state that the amounts payable by West Penn under the Leaseback Agreement will be computed in accordance with Rules 90 and 91 under the Act and other applicable rules and regulations.

*NSTAR* (70–9495)

NSTAR, c/o BEC Energy, 800 Boylston Street, Boston, Massachusetts 02199, a Massachusetts business trust not currently subject to the Act, seeks an order under sections 9(a)(2) and 10 authorizing it to acquire all of the outstanding voting securities of BEC Energy and Commonwealth Energy System (''COM Energy''), each a Massachusetts business trust and public utility holding company exempt from registration under section 3(a)(1) of the Act from all provisions of the Act, except section 9(a)(2). NSTAR also requests an exemption under section 3(a)(1) from all of the provisions of the Act, except section 9(a)(2), upon consummation of the proposed transaction.

BEC Energy is an exempt holding company by order of the Commission.[8] BEC Energy's principal subsidiaries are Boston Edison Company (''Boston Edison''), an electric public utility company, and Boston Energy Technology Group, Inc. (''BETG''), a nonutility subsidiary company. BETG,

[3] Contributions by Allegheny or West Penn to Energy Subsidiary may take the form of any combination of: (1) purchases of capital shares, partnership interests, member interests in limited liability companies, trust certificates or other forms of equity interests; (2) open account advances without interest; (3) loans; and (4) guarantees.

[4] OVEC is an investor-owned utility furnishing electric service in the Ohio River Valley area that was formed for the purpose of providing large electric power requirements for a major uranium enrichment complex built by the Atomic Energy Commission near Portsmouth, Ohio. Allegheny has a 12.5% ownership interest in OVEC. Allegheny OVEC and other investor-owned utilities entered into an Inter-Company Power Agreement, dated July 10, 1953 (the ''OVEC Power Agreement'') by which the parties thereto allocated each utility's share of the power generated by OVEC and by the Indiana-Kentucky Electric Corporation. Under the OVEC Power Agreement, Allegheny assigned to West Penn, the right to receive 7% of the power participation benefits of OVEC.

[5] Allegheny plans to dissolve Energy Subsidiary after all transfers described in Item 1 are completed an Energy Subsidiary will then hold no assets and GENCO will then be owned directly by Allegheny.

[6] The interest in Ft. Martin Unit No. 1 is AYP Energy's only asset.

[7] The Competition Act requires the unbundling of electric services into separate supply, transmission, and distribution services with open retail competition for supply in connection with the restructuring and unbundling of electric services in Pennsylvania.

[8] *See BEC Energy*, Holding Co. Act Release No. 26874 (May 15, 1998).

in turn, owns several subsidiaries engaged in various nonutility businesses.

Boston Edison, a Massachusetts corporation, is engaged in the generation,[9] purchase, transmission, distribution, and sale of electric energy in a service territory covering about 590 square miles within 30 miles of Boston, Massachusetts, encompassing the City of Boston and 39 surrounding cities and towns. Boston Edison serves about 663,000 customers at retail, and it also sells electric energy at wholesale to other electric utilities and municipal electric departments. Boston Edison is regulated by the Massachusetts Department of Telecommunications and Energy and the Federal Energy Regulatory Commission (''FERC'').

Boston Edison wholly owns Harbor Electric Company (''Harbor Electric''), a Massachusetts corporation that delivers electric energy from Boston Edison to the Massachusetts Water Resources Authority (''MWRA''), a large retail customer. Harbor Electric owns a small distribution system used exclusively for distribution to the MWRA. Harbor Electric has no generation and does not engage in wholesale sales or purchases.

Boston Edison is a member of the New England Power Pool (''NEPOOL''), and it has committed its pool transmission facilities to the operational control of ISO-New England, Inc. (''ISO-New England''). ISO-New England's principal responsibilities include administration of the NEPOOL open access transmission tariff (''NEPOOL Tariff''), the operational control of the New England bulk power system, protection of NEPOOL system reliability, and oversight of the New England Power Exchange. The FERC's order authorizing the establishment of ISO-New England and the transfer of operational control of the NEPOOL grid to that entity was issued on June 25, 1997.[10] On July 1, 1997, ISO-New England was activated. Although Boston Edison continues to own its transmission facilities, pool transmission facilities usage is and will be governed by ISO-New England.

For the year ending December 31, 1998, BEC Energy's operating revenues and assets on a consolidated basis were approximately $1.623 billion and $3.214 billion, respectively. As of December 31, 1998, BEC Energy had 47,184,073 outstanding shares of common stock, $1.00 par value.

COM Energy claims an instrastate exemption by rule 2. COM Energy wholly owns five operating public-utility companies; (1) Cambridge Electric Light Company (''Cambridge Electric''); (2) Canal Electric Company (''Canal Electric''); (3) Commonwealth Electric Company (''COM Electric''); (4) Commonwealth Gas Company (''COM Gas''); and (5) Medical Area Total Energy Plant, Inc. (''MATEP''). COM Energy also wholly owns several subsidiaries engaged in nonutility businesses, including steam distribution, servicing and processing liquefied natural gas, and the sale of energy products.

COM Electric, a Massachusetts corporation, is engaged in the purchase, transmission,[11] distribution and resale of power and energy in a service territory of about 1,100 square miles in 40 communities in southeastern Massachusetts, including Cape Cod, Martha's Vineyard, and the counties of Plymouth, Bristol, Barnstable, and Duke. COM Electric serves about 327,000 electric customers at retail. COM Electric also sells electric energy at wholesale to other electric utilities.

Cambridge Electric, a Massachusetts corporation, is engaged in the purchase, transmission,[12] distribution, and resale of power and energy in a service territory of about seven square miles. Cambridge Electric provides retail services in the City of Cambridge, Massachusetts to about 45,000 electric customers. Cambridge Electric also sells power for resale to the Town of Belmont, Massachusetts, and through the NEPOOL.

Canal Electric, a Massachusetts corporation, is engaged in the purchase and sale of electricity at wholesale to affiliates Cambridge Electric and COM Electric. With the exception of an ownership interest in the Seabrook 1 nuclear power facility, Canal Electric has no generating assets.

MATEP is a Massachusetts corporation and wholly owned subsidiary of Advanced Energy Systems, Inc., which, in turn, is a wholly owned subsidiary of COM Energy. MATEP owns and operates a 62 MW steam, chilled water and electric generating facility located in the Longwood Medical area of Boston (''Facility''). MATEP sells the output of the Facility to MATEP LLC, a Delaware limited liability company wholly owned by MATEP, and MATEP LLC resells the steam, chilled water, and electricity to several teaching hospitals affiliated with Harvard University.

COM Gas, a Massachusetts corporation, is a local gas distribution company serving about 239,000 customers in a service territory of about 1,067 square miles in the Cities of Cambridge and Somerville, a small portion of Boston, and in various other eastern and southeastern Massachusetts municipalities in Bristol, Middlesex, Norfolk, Plymouth, and Worcester counties.

COM Energy also owns several nonutility subsidiaries, including: (1) COM Energy Marketing, Inc., a power marketing subsidiary; (2) Advanced Energy Systems, Inc., which owns and operates energy facilities, including MATEP and MATEP LLC; (3) Hopkinton LNG Corp, which owns and operates facilities for the liquefication, storage, and vaporization of natural gas for COM Gas; (4) COM Energy Steam Company, a steam distribution company; (5) COM Energy Resources, Inc., which engages in the sale of energy and energy services; (6) Energy Investment Services, Inc., which invests the proceeds of Canal Electric's asset generation sales on behalf of utility customers; (7) COM Energy Technologies, Inc., which is engaged in the production, distribution, marketing and sale of energy information and control products and technologies; (8) COM Energy Acushnet Realty, a realty trust that leases land to Hopkinton LNG Corp., described above; (9) COM Energy Cambridge Realty, a realty trust that holds various properties; (10) COM Energy Freetown Realty, a realty trust organized to develop a 600 acre parcel of land that it owns in Freetown, Massachusetts; (11) COM Energy Research Park Realty, a realty trust organized to develop a research complex; (12) COM Energy Services Company, the service company for the COM Energy holding company system; and (13) Darvel Realty Trust, a realty trust that owns, develops, and operates real estate.

For the year ended December 31, 1998, COM Energy's operating revenues and assets on a consolidated basis were $980 million and $1.763 billion, respectively. Also as of December 31, 1998, COM Energy had 21,540,550 outstanding shares of common stock, $2.00 par value.

NSTAR states that the merged electric system will meet the standards of section 2(a)(29)(A) as the electric operations of BEC Energy and COM

[9] Boston Edison voluntarily divested its fossil generation business in Massachusetts restructuring proceedings. Boston Edison's only remaining generation asset is the 670 MW Pilgrim nuclear power plant, which Boston Edison recently agreed to sell to Entergy Nuclear Generation Company.

[10] *See New England Power Pool,* 79 FERC P. 61,374 (1997), reh'g pending.

[11] COM Electric is a member of NEPOOL and COM Electric has committed its pool transmission facilities to the operational control of ISO-New England, Inc.

[12] Cambridge Electric is a member of NEPOOL, and Cambridge Electric has committed its pool transmission facilities to the operational control of ISO-New England, Inc.

Energy will be integrated. NASTAR states that BEC Energy and COM Energy have adjacent electric service territories that are physically interconnected. Boston Edison and Cambridge Electric are directly interconnected at two points. Further, COM Electric and Boston Edison are directly interconnected at five points, and they jointly own a transmission line, which runs from West Medway, Massachusetts to the Massachusetts-Rhode Island border in Uxbridge, Massachusetts. MATEP's 13.8 kV distribution system is physically interconnected with Boston Edison's 13.8 kV distribution system at a number of locations, and there are interconnections between the two systems at each of MATEP's customers' facilities. In addition, with the exception of Harbor Electric and MATEP, the electric utility subsidiaries of both BEC Energy and COM Energy are all members of NEPOOL.

NSTAR was formed to facilitate the merger of BEC Energy and COM Energy. BEC Energy and COM Energy together own all of NSTAR's issued and outstanding shares. NSTAR has three subsidiaries: (1) NSTAR Delaware LLC, a limited liability company organized under Delaware law (''NSTAR Delaware''), of which NSTAR owns 100% of the membership interests; (2) BEC Acquisition LLC, a limited liability company organized under Massachusetts law (''BEC Energy Merger Sub''), of which NSTAR owns 99.99% of the membership interests and NSTAR Delaware owns the remaining 0.01% membership interest; and (3) CES Acquisition LLC, a limited liability company organized under Massachusetts law (''COM Energy Merger Sub''), of which NSTAR owns 99.99% of the membership interests and NSTAR Delaware owns the remaining 0.01% membership interest. (NSTAR Delaware, BEC Energy Merger Sub and COM Energy Merger Sub are collectively the ''Merger Subs''.) Upon completion of the proposed transaction, both BEC Energy and COM Energy will become wholly owned subsidiaries of NSTAR, and NSTAR will become the new holding company for the combined holding company systems.

Under the Amended and Restated Agreement and Plan of Merger, dated December 5, 1998 and amended and restated May 4, 1999, among NSTAR, BEC Energy, COM Energy, BEC Energy Merger Sub, and COM Energy Merger Sub (''Merger Agreement''), BEC Energy will merge with the BED Energy Merger Sub (''BEC Merger''), with BEC Energy as the surviving entity, and COM Energy will merger with COM Energy Merger Sub (''COM Energy Merger''), with COM Energy as the surviving entity. (The BEC Merger and the COM Energy Merger are the ''Mergers''.) The Mergers will occur simultaneously. As a result of the Mergers, NSTAR will become the direct and, through NSTAR Delaware, indirect owner of all of the outstanding shares of common stock of BEC Energy and COM Energy. NSTAR Delaware will then be liquidated and its interests in each of BEC Energy and COM Energy will be transferred to NSTAR.

For the BEC Merger, each share of common stock of BEC Energy (other than shares held by BEC Energy, COM Energy, NSTAR or their subsidiaries, which shall be canceled) outstanding immediately prior to the BEC Merger will be converted into the right to receive either $44.10 in cash or one common share of NSTAR, and each 1% membership interest in BEC Merger Sub outstanding immediately prior to the BEC Merger will be converted into 100 shares of the common stock of BEC Energy. Each share of common stock of NSTAR held by BEC Energy will be canceled.

For the COM Energy Merger, each share of common stock of COM Energy (other than shares held by BEC Energy, COM Energy, NSTAR or their subsidiaries, which will be canceled) outstanding immediately prior to the COM Energy Merger will be converted into the right to receive either $44.10 in cash or 1.05 shares of the common stock of NSTAR, and each 1% membership interest in COM Energy Merger Sub outstanding immediately prior to the COM Energy Merger will be converted into 100 shares of the common stock of COM Energy. Each share of the common stock of NSTAR held by COM Energy will be canceled.

NSTAR states that the Mergers will produce benefits to the consumers of electricity and gas in Massachusetts. The respective managements and Board of Trustees of BEC Energy and COM Energy decided, as a result of industry restructuring and the generation plant divestitures by BEC Energy and COM Energy, to focus on their distribution business and to expand geographically through combinations with other electric and gas delivery businesses. NSTAR states that the Mergers will provide a basis for NSTAR to become the premier electric and gas distribution business in the New England region and will provide strategic financial opportunities for both companies and their shareholders. NSTAR also states that the Mergers will provide benefits to its customers and employees, including: improved customer service; cost savings and cost avoidances; an improved competitive and strategic position in the markets for transporting and distributing energy and marketing energy services; and expanded management resources.

The application states that, following the Mergers, NSTAR will meet the requirements for an exemption under section 3(a)(1). It is stated that NSTAR and its public utility subsidiaries will be predominantly intrastate in character and will carry on their business substantially in Massachusetts, the state in which they are organized.

*American Electric Power Co. Inc., et al. (70–8693)*

American Electric Power Company, Inc. (''AEP''), 1 Riverside Plaza, Columbus, Ohio 43215, a registered holding company, and its eight electric utility subsidiary companies, Appalachian Power Company (''Appalachian''), Kingsport Power Company (''Kingsport''), both at 40 Franklin Road, S.W., Roanoke, Virginia 24011; Columbia Southern Power Company (''Columbus''), 215 North Front Street, Columbus, Ohio 43215; Indiana Michigan Power Company (''Indiana''), One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801; Kentucky Power Company (''Kentucky''), 1701 Central Avenue, Ashland, Kentucky 41101; Ohio Power Company (''Ohio''), 301 Cleveland Avenue, S.W., Canton, Ohio 44701; AEP Generating Company (''Generating''), 1 Riverside Plaza, Columbus, Ohio 43215; and Wheeling Power Company (''Wheeling''), 51 Sixteenth St., Wheeling, West Virginia 26003, have filed a post effective amendment to a declaration field under sections 6(a), 7 and 12(b) of the Act and rule 54 under the Act.

By order dated May 4, 1998 (HCAR No. 26867) (''Order''), the Commission authorized AEP, Appalachian, Columbus, Indiana, Kentucky, and Ohio to issue and sell short-term notes to banks and commercial paper through December 31, 2003 (''Authorized Period''). The Order also authorized Generating, Kingsport, and Wheeling to issue and sell short-term notes to banks through the Authorization Period. In addition, applicants were authorized in the Order to issue unsecured promissory notes or other evidence of their reimbursement obligations in respect of letters of credit issued on their behalf by certain banks. The Order authorized this short-term indebtedness in aggregate outstanding amounts not to exceed:

| Company | Amount |
|---|---|
| AEP | $500,000,000 |
| Appalachian | 325,000,000 |

| Company | Amount |
|---|---|
| Columbus | 300,000,000 |
| Indiana | 300,000,000 |
| Kentucy | 150,000,000 |
| Generating | 100,000,000 |
| Kingsport | 30,000,000 |
| Ohio | 400,000,000 |
| Wheeling | 30,000,000 |
| Total | 2,135,000,000 |

Applicants now request that the Order be amended to authorize short-term indebtedness in the following aggregate outstanding amounts:

| Company | Amount |
|---|---|
| AEP | $500,000,000 |
| Appalachian | 325,000,000 |
| Columbus | 350,000,000 |
| Indiana | 500,000,000 |
| Kentucy | 150,000,000 |
| Generating | 125,000,000 |
| Kingsport | 30,000,000 |
| Ohio | 450,000,000 |
| Wheeling | 30,000,000 |
| Total | 2,460,000,000 |

The Authorization Period would remain unchanged. All short-term indebtedness would mature within 270 days after the date the debt is incurred.

For the Commission by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99–16082 Filed 6–23–99; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of June 28, 1999.

A closed meeting will be held on Monday, June 28, 1999, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meetings.

Commissioner Carey, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Monday, June 28, 1999, will be:

Institution of injunctive actions.
Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of Administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: the Office of the Secretary at (202) 942–7070.

Dated: June 21, 1999.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 99–16159 Filed 6–21–99; 4:19 pm]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–41536; File No. SR-AMEX–99–18]**

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to an Amendment To Amex Rule 901C

June 17, 1999.

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 May 17, 1999, the American Stock Exchange LLC (''Amex'' 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. Amex filed Amendment No. 1 on June 3, 1999.[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

Amex proposes to add Commentary .03 to Exchange Rule 901C to permit the Exchange to split stock indices without having to file a proposed rule change under Section 19(b) of the Act.[4] Proposed additions are in italics.

**Designation of Stock Index Options**

Rule 901C (a)-(c) No change.

Commentary .01–.02 No change.

.03 *The Exchange may split index values from time to time in response to prevailing market conditions upon reasonable advance written notice to the membership. In effecting an index split, the Exchange will increase the applicable index divisor, proportionally increase the number of contracts outstanding and increase the index option's applicable position and exercise limits. Upon expiration of the furthest non-LEAP index option contract, the position and exercise limit revision to accommodate positions outstanding prior to the index split will revert to their then applicable limit.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Amex proposes to add Commentary .03 to Amex Rule 901C to establish criteria for the splitting of stock indexes. Over the past year, the Exchange submitted, and the Commission approved, three separate proposals to split six stock indexes with two of those indexes split on two occasions.[5] More recently, the Exchange submitted yet another proposal to split the Morgan Stanley High Technology Index to one half its current value[6] and has received additional requests to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Scott G. Van Hatten, Legal Counsel, Derivative Securities, Amex, to Richard Strasser, Assistant Director, Division of Market Regulation, SEC, on June 4, 1999. In Amendment No. 1, Amex amended the proposed rule text. The amendment is incorporated into this filing.

[4] 15 U.S.C. 78s(b).

[5] *See* Securities Exchange Act Release Nos. 39775 (March 20, 1998), 63 FR 14741 (March 26, 1998) (Securities Broker/Dealer index); 39941 (May 1, 1998), 63 FR 25251 (May 7, 1998) (Amex Airline and de Jager Year 2000 indexes); 39933 (April 30, 1998), 63 FR 25249 (May 7, 1999) (Institutional index); and 41164 (March 12, 1999), 64 FR 13836 (March 22, 1999) (Amex Airline, Natural Gas, Pharmaceutical and Securities Broker/Dealer indexes).

[6] *See* Securities Exchange Act Release No., 41472 (June 2, 1999), 64 FR 31331 (June 10, 1999).

submit further proposals to the Commission to split other stock indexes.

In the previous cases, the Exchange handled each of the stock index splits in a similar manner, splitting an index two for one by doubling the index divisor, issuing one additional contract for each outstanding index option contract, and dividing the strike price in half for each series. The Exchange issued an informational circular to the membership with details concerning the index split and the doubling of position and exercise limits until the expiration of the furthest non-LEAP option contract. Position and exercise limits for each index reverted to their then applicable level.

To permit the Exchange to split broad-based and narrow-based stock indexes without submitting a proposed rule change for review by the Commission, the Exchange proposes to add to its trading rules criteria regarding splitting an index.[7] Specifically, the Exchange proposes to add Commentary .03 Exchange Rule 901C to permit various indexes to be split from time to time subsequent to the issuance of an Informational Circular to the Exchange's membership. Position and exercise limits that would be increased to accommodate any outstanding index option positions would revert, following the expiration of the furthest non-LEAP option contract, to their then applicable limit.

The Exchange believes that the proposal is appropriate because its procedures for handling such stock splits are well established and have been consistently applied with prior notice given to Exchange members. Further, the Exchange has experienced no difficulty in, and has not received comments in opposition to, effecting such splits. The Exchange also believes that investors are readily familiar with periodic common stock splits, and adjustments to options overlying such stocks are handled in much the same was as index splits and do not require Commission review or approval. Lastly, the Exchange believes that the proposal raises no new or novel regulatory issues for the Commission, given its prior review and approval of various stock index splits in the past.

[7] The Commission noted in its release adopting new Rule 19b–4(e), 17 CFR 240.19b–4(e), that if the trading rules, procedures and listing standards for the product class include criteria regarding splitting an index, such changes would be permitted without being considered a material change to the derivative securities product and without requiring the filing of a proposed rule change pursuant to Section 19(b) of the Act. *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

2. Statutory Basis

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 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.

*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 self-regulatory organization 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 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–AMEX–99–18 and should be submitted by July 15, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99–16039 Filed 6–23–99; 8:45 am]

**BILLING CODE 8010–01–M**

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(A)(12).

## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OMB Review

**AGENCY:** Small Business Administration.

**ACTION:** Notice of reporting requirements submitted for OMB review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

**DATES:** Submit comments on or before July 26, 1999. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

**COPIES:** Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

**ADDRESSES:** Address all comments concerning this notice to: *Agency Clearance Officer*, Jacqueline White, Small Business Administration, 409 3rd Street, SW, 5th Floor, Washington, DC 20416; and *OMB Reviewer*, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline White, Agency Clearance Officer, (202) 205–7044.

**SUPPLEMENTARY INFORMATION:**

*Title:* Small Business Development Center Project Officer's Review Checklist.

*Form No:* 59.

*Frequency:* On occasion.

*Description of Respondents:* Applicants requesting Disaster Home Loans.

*Annual Responses:* 228

*Annual Burden:* 228

Dated: June 15, 1999.

**Jacqueline White,**

*Chief, Administrative Information Branch*

[FR Doc. 99–16053 Filed 6–23–99; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OMB Review

**AGENCY:** Small Business Administration.

**ACTION:** Notice of reporting requirements submitted for OMB review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

**DATES:** Submit comments on or before July 26, 1999. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

**COPIES:** Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

**ADDRESSES:** Address all comments concerning this notice to: *Agency Clearance Officer,* Jacqueline White, Small Business Administration, 409 3rd Street, SW, 5th Floor, Washington, DC 20416; and *OMB Reviewer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline White, Agency Clearance Officer, (202) 205–7044.

**SUPPLEMENTARY INFORMATION:**

*Title:* Prime Contracts Program Quarterly Report, Part A, Traditional PCR and Part B, Breakout PCR.

*Form No's:* 843 A & B.

*Frequency:* On occasion.

*Description of Respondents:* Procurement Center Representatives.

*Annual Responses:* 63.

*Annual Burden:* 1,024.

Dated: June 15, 1999.

**Jacqueline White,**

*Chief, Administrative Information Branch.*

[FR Doc. 99–16054 Filed 6–23–99; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activity Under OMB Review

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 7, 1999, [FR 64, page 17055].

**DATES:** Comments must be submitted on or before July 26, 1999. A comment to OMB is most effective if OMB receives it within 30 days of publication.

**FOR FURTHER INFORMATION CONTACT:** Judy Street on (202) 267–9895.

**SUPPLEMENTARY INFORMATION:**

**Federal Aviation Administration (FAA)**

*Title:* Application for a Certificate of Waiver or Application.

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

*OMB Control Number:* 2120–0027.

*Forms(s):* FAA Form 7711–2.

*Affected Public:* Individual airmen, state and local governments and businesses.

*Abstract:* This request for OMB review and renewal describes the public reporting burden imposed on persons that have a need to deviate from the provisions of the Federal Aviation Regulations that govern use of airspace within the United States. The request also describes and the burden associated with authorizations to make parachute jumps.

*Estimated Annual Burden Hours:* 12,202 burden hours annually.

**ADDRESSES:** Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

*Comments Are Invited On:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on June 18, 1999.

**Steve Hopkins,**

*Manager, Standards and Information Division, APF–100.*

[FR Doc. 99–16122 Filed 6–23–99; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activity Under OMB Review

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office Management and Budget (OMB) for extension of currently approved collection. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 7, 1998, [FR 63, page 67504].

**DATES:** Comments must be submitted on or before July 26, 1999. A comment to OMB is most effective if OMB receives it within 30 days of publication.

**FOR FURTHER INFORMATION CONTACT:** Judy Street on (202) 267–9895.

**SUPPLEMENTARY INFORMATION:**

**Federal Aviation Administration (FAA)**

*Title:* Malfunction or Defect Report.

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

*OMB Control Number:* 2120–0003.

*Forms(s):* FAA Form 8010–4.

*Affected Public:* Repair stations certificated under Part 145.

*Abstract:* Collection of this information permits the FAA to evaluate its certification standards, maintenance programs, and regulatory requirements since their effectiveness is reflected in the number of equipment failures or the lack thereof. It is also the basis for issuance of Airworthiness Directives designed to prevent unsafe conditions and accidents.

*Estimated Annual Burden Hours:* 6935 burden hours annually.

**ADDRESSES** Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention FAA Desk Officer.

*Comments Are Invited On:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility, the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on June 18, 1999.

**Steve Hopkins,**

*Manager, Standards and Information Division, APF–100.*

[FR Doc. 99–16123 Filed 6–23–99; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

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

**ACTION:** Monthly Notice of PFC Approvals and Disapprovals. In May 1999, there were 12 applications approved. This notice also includes information on one application, approved in July 1998, inadvertently left off the July 1998 notice. Additionally, five approved amendments to previously approved applications are listed.

**SUMMARY:** The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus budget Reconciliation Act of 1990) (Pub. L. No. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

### PFC Applications Approved

*Public Agency:* City of Harlingen Airport Board, Harlingen, Texas.

*Application Number:* 98–01–C–00–HRL.

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved in this Decision:* $4,024,979.

*Earliest Charge Effective Date:* November 1, 1998.

*Estimated charge Expiration Date:* October 1, 2001.

*Class of Air Carriers Not Required to Collect PFC's: All air taxi commercial operators filing AAA Form 1800–31.*

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Valley International Airport.

*Brief Description of Projects Approved for Collection and Use:*

Groove runway 13/31.
Airfield signage.
Reconstruct south apron.
Airfield drainage.
Land acquisition.
Part 150 land acquisition.
Reconstruct access roads.
Runway and taxiway improvements.
Aircraft rescue and firefighting (ARFF) suits.
Storm water prevention plan.
Replace access control system.
Reconstruct air freight aprons—north and south.
Replace ARFF vehicles.
Terminal jet bridges.
Overlay runway 17L/35R
Concourse carpet replacement.
Flight information display and public address systems.
PFC development.
Overlay general aviation ramps.
Overlay taxiways B and F.
Joint seal air carrier parking apron.
Part 150 and master plan updates.
Airport entrance road (Iwo Jima Boulevard).
Improve terminal drainage.
Terminal roadway signs.
Terminal upgrade/improvement.
Security fencing.
Roadway sweeper.
Terminal entrance road and arcade sidewalk.

*Decision Date:* July 9, 1998.

**FOR FURTHER INFORMATION CONTACT:** Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

*Public Agency:* Board of County Commissioners of Washington County, Hagerstown, Maryland.

*Application Number:* 99–01–C–00–HGR.

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved in this Decision:* $360,000.

*Earliest Charge Effective Date:* August 1, 1999.

*Estimated Charge Expiration Date:* November 1, 2003.

*Class of Air Carriers Not Required To Collect PFC'S:* Air charter.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Hagerstown Regional Airport—Richard A. Henson Field.

*Brief Description of Projects Approved for Collection and Use:* Acquire snow removal equipment (rotary plow). Acquire automatic wheelchair lift device.

*Brief Description of Project Approved for Collection Only:* Construct snow equipment and maintenance building.

*Decision Date:* May 4, 1999.

**FOR FURTHER INFORMATION CONTACT:** Arthur Winder, Washington Airports District Office, (703) 661–1363.

*Public Agency:* Augusta Aviation Commission, Augusta, Georgia.

*Application Number:* 99–01–C–00–AGS.

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved in this Decision:* $29,169,803.

*Earliest Charge Effective Date:* September 1, 1999.

*Estimated Charge Expiration Date:* September 1, 2026.

*Class of Air Carriers Not Required To Collect PFC'S:* Part 135, nonscheduled, whole-plane charter operations by air taxi/commercial operators filing FAA Form 1800–31.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Bush Field Airport.

*Brief Description of Projects Approved for Collection and Use:* Terminal construction and rehabilitation.

*Decision Date:* May 5, 1999.

**FOR FURTHER INFORMATION CONTACT:** Daniel Gaetan, Atlanta Airports District Office, (404) 305–7148.

*Public Agency:* City of North Bend, Oregon.

*Application Number:* 99–04–C–00–OTH

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved in this Decision:* $103,610.

*Earliest Charge Effective Date:* November 1, 2001.

*Estimated Charge Expiration Date:* December 1, 2003.

*Class of Air Carriers Not Required To Collect PFC'S:* Air taxi/commercial operators utilizing aircraft having a seating capacity of less than 20 passengers.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at North Bend Municipal Airport.

*Brief Description of Projects Approved for Collection and Use:*

Construct of hangar access, taxiway, and taxilane.
Rehabilitation of main apron.
ARFF equipment purchase.

*Decision Date:* May 6, 1999.

**FOR FURTHER INFORMATION CONTACT:** Mary Vargas, Seattle Airports District Office, (425) 227–2660.

*Public Agency:* Texas A and M University, College Station, Texas.

*Application Number:* 99–03–C–00–CLL.

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved in This Decision:* $951,400.

*Earliest Charge Effective Date:* June 1, 2000.

*Estimated Charge Expiration Date:* May 1, 2004.

*Class of Air Carriers Not Required to Collect PFC's:* None.

*Brief Description of Projects Approved for Collection and Use:*

Airfield safety improvements—install lights runway 10–28.
Airfield safety improvements—extend taxiway H.
Airfield safety improvements—improve runway 10–28 safety area.
Terminal roof replacement.
Perimeter road (phase 1).
PFC administrative costs.

*Decision Date:* May 12, 1999.

**FOR FURTHER INFORMATION CONTACT:** Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

*Public Agency:* Metropolitan Washington Airports Authority, Alexandria, Virginia.

*Application Number:* 98–02–C–00–IAD.

*Application type:* Impose and use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved in This Decision:* $29,849,777.

*Earliest Charge Effective Date:* December 1, 2008.

*Estimated Charge Expiration Date:* Febvruary 1, 2010.

*Class of Air Carriers Not Required To Collect PFC's:* Part 135 on-demand air taxis, both fixed wing and rotary.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplacements at Washington Dulles International Airport.

*Brief Description of Projects Approved for Collection and Use:*

Regional airline midfield concourse.
Outbound baggage provisions and automation equipment.

*Determination:* The approved amount for each project is less than the amounts requested for PFC funding in the application due to the limitations placed on the amount of funding authority available to the Metropolitan Washington Airports Authority (MWAA) under Pub. L. No. 106–6 (1999). The FAA acknowledges the MWAA's intent, as stated in its April 7, 1999, letter, to seek additional PFC funds, to the amounts requested in the application, once the statutory restrictions on further PFC approval are removed.

*Brief Description of Project Withdrawn:* Interim financing costs.

*Determination:* This project with withdrawn as a separate project by the MWAA by letter dated July 10, 1998. This letter also redistributed the financing costs to each individual project. Therefore, the FAA will not rule on the financing costs as a separate, stand-alone project in this decision.

*Decision Date:* May 14, 1999.

**FOR FURTHER INFORMATION CONTACT:** Terry Page, Washington Airports District Office, (703) 285–2570.

*Public Agency:* Greater Orlando Aviation Authority, Orlando, Florida.

*Application Number:* 99–06–C–00–MCO.

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved in this Decision:* $95,772,673.

*Earliest Charge Effective Date:* May 1, 2005.

*Estimated Charge Expiration Date:* March 1, 2008.

*Class of Air Carriers Not Required to Collect PFC's:* None.

*Brief Description of Projects Approved for Use:*

Cargo road improvements—design.
Cargo road improvements—construction.

*Brief Description of Projects Approved for Collection and Use:*

South terminal earthwork and site preparation.
FAA receiver/transmitter relocation.
Deisgn midfield road extensions.
Hardstand at Airside 1.
Airsides 1 and 3 ramp replanements.
Runway modifications.
Operations training facility.

*Decision Date:* May 17, 1999.

**FOR FURTHER INFORMATION CONTACT:** Vernon Rupinta, Orlando Airports District Office, (407) 812–6331, extension 24.

*Public Agency:* Dallas-Fort Worth International Airport Board, Dallas-Forth Worth, Texas.

*Application Number:* 98–04–U–00–DFW.

*Application Type:* Use PFC revenue.

*PFC Level:* $3.00.

*Total PFC Revenue To be Used in This Decision:* $24,815,000.

*Charge Effective Date:* February 1, 1997.

*Estimated Charge Expiration Date:* May 1, 2001.

*Class of Air Carriers Not Required To Collect PFC'S:* No change from previous decision.

*Brief Description of Projects Approved for Use:*

Runway 17C extension and associated development.
Runways 18R and 18L extensions and associated development.

*Decision Date:* May 17, 1999.

**FOR FURTHER INFORMATION CONTACT:** Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

*Public Agency:* City of Chicago, Department of Aviation, Chicago, Illinois.

*Application Number:* 99–10–U–00–ORD.

*Application Type:* Use PFC revenue.

*PFC Level:* $3.00.

*Total PFC Revenue To be Used in This Decision:* $84,370,000.

*Charge Effective Date:* November 1, 2011.

*Estimated Charge Expiration Date:* September 1, 2017.

*Class of Air Carriers Not Required To Collect PFC'S:* No change from previous decision.

*Brief Description of Projects Approved for Use:*

Blast mitigation—phase II.

Airport Transit System vehicles acquisition (12 cars).
Bessie Coleman bridge rehabilitation.
Lake O'Hare capacity enhancement.
Runway 9L/27R rehabilitation.
Perimeter intrusion detection system.
Taxiway B rehabilitation at C3/C4.

*Brief Description of Project Withdrawn:*

Snow dump improvements.

*Determination:* This project was withdrawn from the PFC application by the City by letter dated March 4, 1999. Therefore, the FAA did not rule on this project in this Record of Decision. This decision does not affect the collection authority approved for this project in the 98–08–C–00–ORD decision.

*Decision Date:* May 26, 1999.

**FOR FURTHER INFORMATION CONTACT:** Mark A. McClardy, Chicago Airports District Office, (847) 294–7335.

*Public Agency:* Pennsylvania State University, University Park, Pennsylvania.

*Application Number:* 99–02–C–00–UNV.

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved in This Decision:* $1,448,605.

*Earlier Charge Effective Date:* September 1, 1999.

*Estimated Charge Expiration Date:* October 1, 2004.

*Class of Air Carriers Not Required To Collect PFC'S:* Charter carriers and air taxis.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual emplanements at University Park Airport.

*Brief Description of Projects Approved for Collection and Use:*

Property acquisition (Spearly), phase I runway 6 approach.
ARFF vehicle modification.
ARFF equipment.
Snow removal equipment storage building.
Acquire snow removal vehicles.
Design and construction of runway 6–24 extension and stormwater management.
Environmental assessment study cost overrun.
Phase I historical/archaeological study.
Security control and access improvements.
Handicapped access lift.
Connect to municipal water.
Taxiway extension for hangar access.
Interior roads.
Part 150 study.
Obstruction removal.
Highway access improvements (deceleration lanes).
Automated weather observation system.
Master plan update.

*Brief Description of Projects Approved for Collection Only:*

Expand airline terminal apron.
ARFF vehicle.
Snow removal vehicle—blower.
Construct aircraft parking apron.
Extend taxiways to T-hangars.

*Brief Description of Project Withdrawn:*

Snow dump improvements.

*Determination:* This project was withdrawn from the PFC application by the public agency by letter dated April 5, 1999. Therefore, the FAA did not rule on this project in this Record of Decision.

*Decision Date:* May 26, 1999.

**FOR FURTHER INFORMATION CONTACT:** Roxane Wren, Harrisburg Airports District Office, (717) 730–2831.

*Public Agency:* City of Worcester, Massachusetts.

*Application Number:* 99–04–C–00–ORH.

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved in This Decision:* $1,190,443.

*Earliest Charge Effective Date:* September 1, 1999.

*Estimated Charge Expiration Date:* December 1, 2006.

*Class of Air Carriers Not Required To Collect PFC's:* None.

*Brief Description of Projects Approved for Collection and Use:*

Construct new terminal facilities and related landside/airside improvements.
Design terminal apron and upgrade airports signage, and develop 5-year plan environmental impact statement.
Installation of airfield guidance signs.

*Decision Date:* May 27, 1999.

**FOR FURTHER INFORMATION CONTACT:** Priscilla Scott, New England Region Airports Division, (781) 238–7614.

*Public Agency:* Port of Portland, Portland, Oregon.

*Application Number:* 99–07–C–PDX.

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved in This Decision:* $146,483,000.

*Earliest Charge Effective Date:* June 1, 2012.

*Estimated Charge Expiration Date:* September 1, 2015.

*Class of Air Carriers Not Required To Collect PFC's:* Air taxi and commerical operators.

*Determination:* Approved. Based on the information contained in the public agency's application, the FAA has dtermined that the approved class accounts for less than 1 percent of the total annual enplanements at Portland International Airport (PDX).

*Brief Description of Project Approved for Collection and Use:*

Airport Max light rail extension to PDX.

*Decision Date:* May 27, 1999.

**FOR FURTHER INFORMATION CONTACT:** Mary Vargas, Seattle Airports District Office, (425) 227–2660.

*Public Agency:* City of Cleveland, Ohio.

*Application Number:* 99–06–C–00–CLE.

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved in This Decision:* $182,207,915.

*Earliest Charge Effective Date:* June 1, 1999.

*Estimated Charge Expiration Date:* March 1, 2008.

*Class of Air Carriers Not Required To Collect PFC's:* Air taxi.

*Determination:* Approved. Based on the information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Cleveland Hopkins International Airport (CLE).

*Brief Description of Projects Approved for Collection at CLE and Use at CLE:*

Brook Park land transfer.
Residential sound insulation.
Replacement of existing tug road.
Runway 5R/23L extension preliminary engineering and water resource permitting (Section 401/404 permits).
Federal Inspection Services (FIS) facility (design).
Interim commuter ramp.
Site utilities and Concourse D ramp.

*Brief Description of Projects Approved in Part for Collection at CLE and Use at CLE:*

Expand and renovate baggage claim area and replace baggage claim devices.

*Determination:* Partially approved. The approved amount has been reduced from that requested to reflect a proposed AIP entitlement grant.

*Brief Description of Projects Approved in Part for Collection at CLE and Use at Burke Lakefront Airport:*

Runway 6L/24R overlay.

*Determination:* Partially approved. The approved amount has been reduced from that requested to reflect funding received from an AIP grant.

*Brief Description of Projects Approved for Collection Only:*

Runway 5R/23L extension—design.
FIS facility (construction).
Analex office building demolition.
Runway 5R/23L extension—construction.
Installation of instrument landing system on runway 6L/24R.

*Decision Date:* May 28, 1999.

**FOR FURTHER INFORMATION CONTACT:** Robert Conrad, Detroit Airports District Office, (734) 487–7295.

AMENDMENTS TO PFC APPROVALS

| Amendment No., city, state | Amendment approved date | Original approved net PFC revenue | Amended approved net PFC revenue | Original estimated charge exp. date | Amended estimated charge exp. date |
|---|---|---|---|---|---|
| 93–01–C–02–DSM, Des Moines, IA | 03/30/99 | $7,875,029 | $8,775,029 | 01/01/05 | 06/01/05 |
| 96–03–C–01–PDX, Portland, OR | 05/06/99 | 55,522,000 | 160,237,000 | 04/01/02 | 02/01/05 |
| 95–01–C–02–LEB, Lebanon, NH | 05/19/99 | 556,515 | 431,515 | 10/01/99 | 12/01/99 |
| 97–03–C–03–DFW, Dallas-Fort Worth, TX | 05/20/99 | 258,018,427 | 258,181,427 | 05/01/01 | 05/01/01 |
| 97–03–C–04–DFW, Dallas-Fort Worth, TX | 05/20/99 | 258,181,427 | 261,050,427 | 05/01/01 | 05/01/01 |

Issued in Washington, DC on June 18, 1999.

**Eric Gabler,**

*Manager, Passenger Facility Charge Branch.*

[FR Doc. 99–16124 Filed 6–23–99; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Washoe County, Nevada

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

**ACTION:** Notice of Intent.

**SUMMARY:** The Federal Highway Administration (FHWA) is issuing this Notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for the proposed Reno Transportation Rail Access Corridor (ReTRAC) project in Washoe County, Nevada.

**FOR FURTHER INFORMATION CONTACT:**
Daryl James, P.E., Chief, Environmental Services Division, Nevada Department of Transportation, 1263 South Stewart Street, Carson City, NV 89712, Telephone: 775–888–7013
John T. Price, Division Administrator, Federal Highway Administration, Nevada Division, 705 North Plaza St., Suite 220, Carson City, NV 89701, Telephone: 775–687–1204

**SUPPLEMENTARY INFORMATION:** The FHWA in cooperation with the Nevada Department of Transportation and the City of Reno will prepare an EIS on the proposal to improve the Reno Transportation Rail Access Corridor in Washoe County, Nevada. The proposed improvement would involve the reconstruction of the Union Pacific rail tracks between West Second and Sutro Streets for a distance of approximately 2.1 miles. The proposed project, would eliminate 11 at-grade street crossings and would include an access road adjacent to the tracks. There will be no turnouts or connections to other tracks within the project area except for the Reno Branch Connection Tracks. Prior to severing the Union Pacific's existing mailine tracks, a shoo-fly temporary track shall be constructed adjacent to the existing mainline tracks. The ReTRAC Project will mitigate the increased rail traffic predicted to significantly impact ground transportation, pedestrian safety and service delivery systems. The EIS will consider the effects of the proposed project, the No Action Alternative option, and other alternatives to the proposed project.

Letters describing the proposed project and soliciting comments will be sent to appropriate federal, state, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Four public scoping meeting sessions will be held at the times and place noted below:

**Scoping Meeting Sessions**

*Dates:* Tuesday and Wednesday, July 13 and 14, 1999.

*Times:* 2:00 pm–4:30 pm and 6:30 pm–9:00 pm (on both days).

*Place:* Reno/Sparks Convention Center, North Meeting Room B–1, 4590 South Virginia Street, Reno, Nevada.

In addition to the scoping meeting sessions, a public meeting will be held when the Draft Environmental Impact Statement (DEIS) is completed. The DEIS will be available for public and agency review and comment prior to the public meeting. Public notice will be given of the time and place of the meetings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed project and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: June 14, 1999.

**John T. Price,**

*Division Administrator, Federal Highway Administration, Carson City, Nevada.*

[FR Doc. 99–16128 Filed 6–23–99; 8:45 am]

**BILLING CODE 4910–22–M**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Petition for Exemption From the Vehicle Theft Prevention Standard; BMW

**AGENCY:** National Highway Traffic Safety Administration (NHTSA) Department of Transportation (DOT).

**ACTION:** Grant of petition for exemption.

**SUMMARY:** This notice grants in full the petition of BMW of North America, Inc., (BMW) for an exemption of a high-theft line, the BMW X5, from the parts-marking requirements of the vehicle theft prevention standard. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements.

**DATES:** The exemption granted by this notice is effective beginning with the 2000 model year (MY).

**FOR FURTHER INFORMATION CONTACT:** Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Ms. Proctor's telephone number

is (202) 366–0846. Her fax number is (202) 493–2739.

**SUPPLEMENTARY INFORMATION:** In a petition dated March 8, 1999, BMW of North America, Inc. (BMW), requested exemption from the parts-marking requirements of the theft prevention standard (49 CFR part 541) for the BMW X5 vehicle line, beginning with MY 2000. The petition has been filed pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard*, based on the installation of an antitheft device as standard equipment for an entire vehicle line. Based on the evidence submitted by BMW, the agency believes that the antitheft device for the BMW X5 vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard (49 CFR part 541).

BMW's submittal is considered a complete petition, as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

In its petition, BMW provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new line. BMW will install its antitheft device as standard equipment on the MY 2000 BMW X5 vehicle line. The antitheft device is a passive, electronically-coded vehicle immobilizer (EWS) system. The device will prevent the vehicle from being driven away under its own engine power in the event the ignition lock and doors have been manipulated. The device is automatically activated when the engine is shut off and the vehicle key is removed from the ignition lock cylinder. In addition to the key, the antitheft device can be activated by the use of its radio frequency remote control. Locking the vehicle door and trunk by using the key cylinder or the radio frequency remote control will further secure the vehicle. BMW stated that the frequency codes for the remote control constantly change to prevent an unauthorized person from opening the vehicle by intercepting the signals of its remote control.

The EWS system consists of a key with a transponder, a loop antenna (coil) around the steering lock cylinder, an EWS control unit and an engine control unit (DME/DDE) with encoded start release input.

BMW stated that integrated in the key is a transponder chip that consists of a transponder, a small antenna coil, and a memory which can be written to and read from. The memory contains its own unique key and customer service data. The transponder is a special transmitter/receiver that communicates with the EWS control through the transceiver module.

BMW states that the EWS control unit provides the interface to the loop antenna (coil), engine control unit and starter. The primary tasks of the EWS control unit will consist of querying key data from the transponder and providing the coded release of the engine management for a valid key. BMW also states that the engine control unit with coded start release input has been designed in such a manner that the ignition and the fuel supply are only released when a correct release signal has been sent by the EWS control unit. The EWS control unit inspects the key data for correctness and allows the ignition to operate and fuel supply to be released when a correct signal has been received.

The vehicle is also equipped with a central-locking system which locks all doors, the hood, the trunk and fuel filler lid. To prevent locking the keys in the car upon exiting, the driver door can only be locked with a key or by the radio frequency remote control after it is closed. This also locks the other doors. If the doors are open at the time of locking, they are automatically locked when they are closed.

BMW mentioned the uniqueness of its locks and its ignition key. BMW stated that its vehicle's locks are almost impossible to pick, and its ignition key cannot be duplicated on the open market. BMW also stated that a special key blank, key-cutting machine and owner's individual code are needed to cut a new key and that its key blanks, machines and codes will be closely controlled and new keys will only be issued to authorized persons. Additionally, spare keys can only be obtained through the BMW dealer because they are not a copy of lost originals, but new keys with their original electronic identification. Lost keys can be disabled at the vehicle and enabled again as an additional security measure. Every key request is also documented so that any inquiries by insurance companies and investigative authorities can be followed up on.

The battery for BMW's X5 vehicle line will be inaccessibly located and covered as an additional security measure. Therefore, even if a thief does manage to penetrate and disconnect the battery, it will not unlock the doors. However, in the event of a crash, an inertia switch will automatically unlock all the doors.

BMW also stated that its antitheft device does not incorporate any audible or visual alarms. However, based on the declining theft rate experience of other vehicles equipped with devices that do not have an audio or visual alarm for which NHTSA has already exempted from the parts-marking requirements, the agency has concluded that the data indicate that lack of a visual or audio alarm has not prevented these antitheft devices from being effective protection against theft.

BMW compared the device proposed for its new line with devices which NHTSA has previously determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements of Part 541, and has concluded that the antitheft device proposed for this new line is no less effective than those devices in the lines for which NHTSA has already granted exemptions from the parts-marking requirements. The antitheft system that BMW intends to install on its X5 vehicle line for the MY 2000 is exactly the same system that BMW installed on its Carline 5 for MY 1997 and its Carline 3 for MY 1999. The agency granted BMW's petitions for exemption of its Carline 5 beginning with the 1997 model year and its Carline 3 beginning with the 1999 model year in full (see 61 FR 6292, February 16, 1996 and 62 FR 62800, November 25, 1997, respectively).

In order to ensure reliability and durability of the device, BMW conducted performance tests based on its own specified standards. BMW provided a detailed list of the following tests it conducted: climatic tests, high temperature endurance run, thermoshock test in water, chemical resistance, vibrational load, electrical ranges, mechanical shock tests, and electromagnetic field compatibility.

Additionally, BMW stated that its immobilizer system fulfills the requirements of the European vehicle insurance companies which became standard as of January 1995. The requirements prescribe that the vehicle must be equipped with an electronic vehicle immobilizing device which works independently from the mechanical locking system and prevents the operation of the vehicle through the use of coded intervention in the engine management system. In addition, the device must be self-arming (passive), and must become effective upon leaving the vehicle, or not later than the point at which the vehicle is locked, and must deactivate the vehicle only by electronic means and not with the mechanical key. BMW also stated that the doors and ignition locks for the Carline 3 conform to Swedish Regulation F42–1975, which

requires a minimum of five minutes resistance to the application of commonly available tools.

Based on evidence submitted by BMW, the agency believes that the antitheft device for the X5 vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard (49 CFR part 541).

The agency believes that the device will provide four of the five types of performance listed in 49 CFR 543.6(a)(3): promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device. The device lacks the ability to attract attention to the efforts of unauthorized persons to enter or operate a vehicle by a means other than a key (§ 541.6(a)(3)(ii).

As required by 49 U.S.C. 33106 and 49 CFR 543.6(a)(4) and (5), the agency finds that BMW has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information BMW provided about its antitheft device.

For the foregoing reasons, the agency hereby grants in full BMW of North America's petition for an exemption for the MY 2000 X5 vehicle line from the parts-marking requirements of 49 CFR part 541.

If BMW decides not to use the exemption for this line, it must formally notify the agency, and, thereafter, the line must be fully marked as required by 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if BMW wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.'' The agency wishes to minimize the administrative burden that § 543.9(c)(2) could place on exempted vehicle manufacturers and itself.

The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

**Authority:** 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: June 21, 1999.

**L. Robert Shelton,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 99–16125 Filed 6–23–99; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

**[Docket No. PDA–15(R)]**

### Preemption Determination No. PD–14(R); Houston, TX, Fire Code Requirements on the Storage, Transportation, and Handling of Hazardous Materials

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Decision on petition for reconsideration of administrative determination of preemption.

*Petitioner:* City of Houston, Texas.

*State Laws Affected:* Houston, Texas, Ordinance No. 96–1249 adopting the 1994 Uniform Fire Code with certain modifications.

*Applicable Federal Requirements:* Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180.

*Modes Affected:* Highway.

**SUMMARY:** RSPA denies the petition for reconsideration submitted by the City of Houston (City), in which the City asked RSPA to defer any determination whether Federal hazardous material transportation law preempts provisions of the Houston Fire Code relating to the transportation of hazardous materials. RSPA clarifies that its December 7, 1998 determination applies only to the transportation of hazardous materials in commerce by motor vehicles. In that determination, RSPA found that the following requirements in the Houston Fire Code are not preempted because they do not apply when the transportation of hazardous materials is governed by DOT's regulations: (1) Permits for vehicles that transport hazardous materials in commerce, including the definition of ''hazardous materials'' as part of these permit requirements; (2) the design, construction, or operation of tank vehicles used for transporting flammable or combustible liquids; (3) physical bonding during loading of a tank vehicle with a flammable or combustible liquid; (4) unattended parking of a tank vehicle containing a flammable or combustible liquid; and (5) the service rating of the fire extinguisher required to be carried on a tank vehicle used to transport a flammable or combustible liquid.

**FOR FURTHER INFORMATION CONTACT:** Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001, telephone 202–366–4400.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

In February 1996, the Association of Waste Hazardous Materials Transporters (AWHMT) applied for an administrative determination that Federal hazardous material transportation law preempts certain provisions of the Fire Code of the City of Houston, Texas, as applied to tank vehicles that pick up or deliver hazardous materials within the City of Houston (City).

At that time, the Houston Fire Code consisted of the 1991 edition of the Uniform Fire Code as modified in a ''Conversion Document.'' The requirements challenged by AWHMT involved: (1) Inspections and fees required to obtain an annual permit for a cargo tank motor vehicle to pick up or deliver hazardous materials (including flammable and combustible liquids) within the City; (2) the definition of ''hazardous materials'' as used in these permit requirements; and (3) design, construction, and operating requirements for tank vehicles used to transport flammable and combustible liquids, including the number and service rating of fire extinguishers required on the vehicle, unattended parking of the vehicle, ''FLAMMABLE'' and ''NO SMOKING'' markings on the vehicle, and static protection (or ''bonding'') during loading of the vehicle. AWHMT separately provided copies of citations that the City had issued to operators of cargo tank motor vehicles for loading or unloading corrosive materials within the City without a permit, despite an exception in Sec. 80.101(a) of the 1991 edition of the Uniform Fire Code for:

> Off-site hazardous materials transportation in accordance with DOT requirements.

In Sec. 79.101(a), there was also a similar exception for:

> The transportation of flammable and combustible liquids when in accordance with DOT regulations on file and approved by DOT.

In November 1996, the City adopted the 1994 edition of the Uniform Fire Code together with certain ''City of Houston Amendments.'' At this time, the ''FLAMMABLE'' and ''NO SMOKING'' marking requirement was eliminated, and the City reduced from two to one the number of fire extinguishers required on a tank vehicle used to transport a flammable or combustible liquid. In all other respects, the provisions in the Houston Fire Code challenged by AWHMT were not substantively changed. The exceptions for the transportation of hazardous materials ''in accordance with'' DOT's regulations were retained in the Uniform Fire Code. *See* Secs. 7901.1.1 and 8001.1.1, Uniform Fire Code (1994 edition).

RSPA specifically invited detailed comments on ''the scope and meaning'' of these exceptions in the Uniform Fire Code. *See* the Public Notices published in the **Federal Register** on March 20, 1996, 61 FR 11463, 11465, and April 9, 1997, 62 FR 17281, 17282. In its May 1997 comments, the City stated that it recognizes these exceptions, and permits ''are no longer required for vehicles transporting hazardous material or flammable or combustible material if the vehicle meets DOT requirements''; that ''the inspection and fee provisions * * * also do not apply to such vehicles''; and that tank vehicle design and construction requirements in the Uniform Fire Code were applied only ''to tank vehicles that are used exclusively on-site and to off-site vehicles not meeting DOT specifications.'' The City argued that other ''challenged provisions still in effect are not preempted,'' and it also requested ''[i]n the alternative * * * that a decision on AWHMT's application be postponed until completion'' of RSPA's rulemaking proceeding in Docket No. HM–223, ''Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage.'' *See* RSPA's Advance Notice of Proposed Rulemaking, 61 FR 39522 (July 29, 1996), and Supplemental Advance Notice of Proposed Rulemaking, 64 FR 22718 (Apr. 27, 1999).

In PD–14(R), published in the **Federal Register** on December 7, 1998, RSPA indicated it agreed with the City's interpretation of the exceptions in Secs. 7901.1.1 and 8001.1.1, but that RSPA read those exceptions to ''apply to the entire contents of Articles 79 and 80—not just the permit requirements.'' 63 FR 67506, 67510. RSPA stated that it ''must assume that the City applies the exceptions in Secs. 7901.1.1 and 8001.1.1 in a consistent manner,'' to all the requirements in Articles 79 and 80. *Id.* Accordingly, RSPA found that that Federal hazardous material transportation law does not preempt requirements in the following sections of the Houston Fire Code because these requirements do not apply to the transportation of hazardous materials that is subject to the HMR:

- Secs. 105.4, 105.8.f.3, 105.h.1, 106.1, 7901.3.1, and 8001.3.1., concerning permits (including the inspections and fees required to obtain a permit);
- Secs. 209 and 8001.1.2, concerning the definition of ''hazardous materials'' (as relevant to the permit requirements in Secs. 105.8.f.3 and 8001.3.1);
- Sec. 7904.6.1, concerning requirements for the design and construction of tank vehicles used to transport a flammable or combustible liquid;
- Sec. 7904.6.3.4, concerning physical bonding during the loading of a tank vehicle with a flammable or combustible liquid, to prevent the accumulation of static charges;
- Sec. 7904.6.5.2.1, prohibiting unattended parking of tank vehicles used for flammable or combustible liquids at specific locations or ''at any other place that would, in the opinion of the chief, present an extreme life hazard''; and
- Sec. 7904.6.7, requiring a fire extinguisher with a minimum rating of 2–A, 20–B:C on board a tank vehicle used for flammable or combustible liquids.

63 FR at 67511.

In PD–14(R), RSPA declined to consider a separate requirement in the Houston Fire Code that rail tank cars containing flammable or combustible liquids ''shall be unloaded as soon as possible after arrival at point of delivery'' and within 24 hours of being connected for transfer operations unless otherwise approved by the fire chief. Sec. 7904.5.4.3. RSPA noted that this requirement in the Uniform Fire Code, as adopted by Los Angeles County, had been found to be preempted in PD–9(R), Los Angeles County Requirements Applicable to the Transportation and Handling of Hazardous Materials on Private Property, 60 FR 8774, 8783, 8788 (Feb. 15, 1995). However, AWHMT had not challenged this requirement, as adopted in the Houston Fire Code, until May 1997, fifteen months after its application which, as all parties understood, ''challenged requirements in the Houston Fire Code only as applied to motor carriers that pick up or deliver hazardous materials within the City.'' 63 FR at 67508.

RSPA also declined to defer its decision in PD–14(R) until completion of the rulemaking in HM–223. RSPA noted that other preemption proceedings (PDs 8(R)–11(R)) involve requirements of the Uniform Fire Code (as adopted by Los Angeles County) as applied to the '''on-site' handling and transportation of hazardous materials.'' 63 FR at 67507. Unlike the issues in those decisions that have been placed ''on hold'' pending the consideration of the scope of the HMR in HM–223,

> no party here disputes that the HMR apply to carriers who pick up or deliver hazardous materials within the City for ''off-site'' transportation. The main issue in this case is whether the Houston Fire Code applies to those carriers and their vehicles—not whether the HMR apply.

*Id.* RSPA added that:

> AWHMT, the City, and other parties who submitted comments in this proceeding are encouraged to participate fully in HM–223 because of the relationship between the applicability of the HMR and the Uniform Fire Code to transportation-related activities involving hazardous materials.

*Id.*

In Part I.C. of its decision, RSPA discussed the applicability of Federal hazardous material transportation law to the transportation of hazardous materials in commerce and the standards for making determinations of preemption. 63 FR at 67508–67509. As explained there, unless DOT grants a waiver or there is specific authority in another Federal law, a State (or other non-Federal) requirement is preempted if:

- —It is not possible to comply with both the State requirement and a requirement in the Federal hazardous material transportation law or regulations;
- —The State requirement, as applied or enforced, is an ''obstacle'' to the accomplishing and carrying out of the Federal hazardous material transportation law or regulations; or
- —The State requirement concerns a ''covered subject'' and is not ''substantively the same as'' a provision in the Federal hazardous material transportation law or regulations. Among the five covered subjects are (1) ''the designation, description, and classification of hazardous material,'' and (2) the ''packing, repacking, handling, labeling, marking, and placarding of hazardous material.''

*See* 49 U.S.C. 5125 (a) & (b). These preemption provisions stem from congressional findings that State and local laws which vary from Federal hazardous material transportation requirements can create ''the potential for unreasonable hazards in other

jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting * * * regulatory requirements,'' and that safety is advanced by ''consistency in laws and regulations governing the transportation of hazardous materials.'' Pub. L. 101–615 §§ 2(3) & 2(4), 104 Stat. 3244.

In PD–14(R), RSPA also explained its procedures for issuing preemption determinations and the rights to file a petition for reconsideration and/or judicial review. 63 FR at 67509, 67511.

Within the 20-day time period provided in 49 CFR 107.211(a), the City filed a petition for reconsideration of PD–14(R). The City certified that it had mailed a copy of its petition to AWHMT and all others who had submitted comments. AWHMT submitted comments on the City's petition for reconsideration.

## II. Petition for Reconsideration

In its petition, the City again acknowledges that the Uniform Fire Code contains ''exceptions for areas governed by DOT regulations,'' but states that ''[c]ontrary to DOT's statement at [63 FR] 67506, however, the City's exceptions for DOT-regulated activities apply only to *transportation*.'' (emphasis in original) The City appears to argue that the requirements challenged by AWHMT that fall within ''transportation'' are only those ''relating to tank vehicle design, construction, and operation and to fire extinguishers.'' The City asks RSPA to defer considering the other requirements challenged by AWHMT because they are ''within the scope of the pending rulemaking [in] Docket No. HM–223'' and ''not within the intended scope of [the Uniform Fire Code] exception for DOT-regulated transportation activity'':

—Permits for the storage, handling * * * dispensing, mixing, blending or using hazardous materials.
—Physical bonding during loading of the vehicle.
—Unattended parking of the vehicle.

According to the City, ''[d]eferral is all the more appropriate in light of the recent extension of the HMR during the course of this proceeding to all intrastate transportation of hazardous materials in commerce.'' The City asserts that

> DOT's refusal to defer consideration of Fire Code requirements imposed on carriers at in-transit facilities completely ignores DOT's confirmation that HM–223 is expressly intended to address activities at ''transfer and other mid-transportation facilities'' which, under any logical construction, would include activities at ''in-transit facilities.'' * * * The City's position is that the activities regulated by the Fire Code are not incidental to transportation. Lacking a rule [in HM–223], DOT should defer its decision altogether.

On February 3, 1999, an official of the Houston Fire Department telephoned RSPA's Office of the Chief Counsel to ask about the status of RSPA's determination in PD–14(R) and the rulemaking in HM–223. Based on that conversation, RSPA understands that the concerns raised in the City's petition for reconsideration relate to the facilities at which hazardous materials are stored, rather than the vehicles that transport hazardous materials and pick up or deliver hazardous materials within the City. According to this official, the interest of the Fire Department is that the same fire protection standards apply to both (1) the buildings and other facilities where hazardous materials are stored for short times in the course of transportation and (2) the facilities where hazardous materials are stored and used outside of transportation.

## III. Discussion

The Uniform Fire Code (1994 edition) states that it is primarily directed at ''the hazards of fire and explosion arising from the storage, handling, and use of hazardous substances, materials and devices, and from conditions hazardous to life and property in the *use and occupancy of buildings and premises*.'' Sec. 101.2 (''Scope'') (emphasis added); *see* 63 FR at 67507. The specific exceptions in Secs. 7901.1.1 and 8001.1.1 for transportation ''in accordance with'' DOT's regulations seem to be clear that the Uniform Fire Code is not intended to apply to vehicles when they are transporting hazardous materials subject to the HMR. When the Uniform Fire Code is properly applied in this manner, there is no inconsistency with Federal hazardous material transportation law or the HMR.

AWHMT submitted its application after the City applied permit requirements in the 1991 edition of the Uniform Fire Code (as adopted and amended by the City) to motor carriers that (according to AWHMT) were transporting hazardous materials in accordance with and subject to the HMR. Specifically, the City issued citations to the operators of motor vehicles that loaded or unloaded corrosive materials within the City when the vehicles had not been inspected and issued a permit. *See* the discussion in PD–14(R), 63 FR at 67510, and in RSPA's Notices, 61 FR 11463 (Mar. 20, 1996), and 62 FR 17281 (Apr. 9, 1997). Following the City's adoption of the 1994 edition of the Uniform Fire Code, however, as discussed in PD–14(R), 63 FR at 67510,

> the City specifically acknowledged that the ''express exceptions for DOT-regulated activities'' in Secs. 7901.1.1 and 8001.1.1 mean that ''the Fire Code should not be read as applicable to over-the-road (off-site) transportation * * *'' The City elaborated that ''permits will not be required for DOT-regulated activities''; the ''hazardous materials classifications [in the Houston Fire Code] * * * are not applicable to activities regulated by the DOT''; and that provisions in the Fire Code setting design and construction requirements for tank vehicles apply only to ''off-road (or on-site) transportation of flammable or combustible liquids not regulated by DOT.''

Based on these representations that the City is now interpreting its Fire Code in a manner that is fully consistent with Federal hazardous material transportation law and the HMR, RSPA concluded that Federal hazardous material transportation law does not preempt the requirements in the Houston Fire Code challenged in AWHMT's application. RSPA understood that the City was no longer requiring permits (or inspections) for vehicles that pick up or deliver hazardous materials within the City, which were subject to the HMR. As discussed in Part I, above, RSPA also read the exceptions in Secs. 7901.1.1 and 8001.1.1 to ''apply to the entire contents of Articles 79 and 80 [of the Uniform Fire Code]—not just to the permit requirements.'' *Id.*

The City's petition for reconsideration seems to disagree with this last conclusion. Its statements that requirements challenged by AWHMT, as applied to vehicle operators, concern activities that are not subject to the HMR but are ''within the scope of the pending rulemaking Docket No. HM–223,'' are somewhat confusing. The concept that the exceptions in Secs. 7901.1.1 and 8001.1.1 apply to only some of the requirements in Articles 79 and 80 of the Uniform Fire Code mirrors similar contradictory statements in the City's May 1997 comments that requirements in Article 79 of the Uniform Fire Code concerning physical bonding, unattended parking, and fire extinguishers ''are not affected by the [e]xceptions'' in Secs. 7901.1.1 and 8001.1.1. *See* 63 FR at 67510. RSPA found this statement to be ''in direct conflict with the plain language of these exemptions.'' *Id.*

More importantly, the City has not shown that its asserted uncertainty about the applicability of the HMR to certain transportation-related activities should cause RSPA to defer its determination on AWHMT's

application. The activities covered by specific requirements challenged by AWHMT seem to clearly fit within the scope of ''transportation'' subject to the HMR.

Based on AWHMT's application and the comments submitted, RSPA understood that, during 1995–96, the City required a carrier to obtain a vehicle permit (following inspection of the cargo tank motor vehicle) in order for the carrier to deliver hazardous materials within the City—as contrasted to a consignee's unloading of a bulk container over an extended period of time after delivery of the container by the carrier. RSPA stated in PDs 8(R)–11(R) that unloading by the carrier would generally be a part of the delivery to the consignee and incidental to the movement of those materials in commerce, ''even when that unloading takes place exclusively at a consignee's facility.'' 60 FR at 8777.

Similarly, the loading of a tank vehicle with a flammable or combustible liquid, for which static protection (or ''bonding'') is required by 49 CFR 177.837(c), would ordinarily be considered loading ''incidental to the movement'' of property off-site (or in commerce) and within the scope of ''transportation'' subject to the HMR, *see* 49 U.S.C. 5102(12), rather than Sec. 7904.6.1 of the Uniform Fire Code. DOT's parking regulations in 49 CFR 397.7 seem to apply to any tank vehicle in the locations specified in Sec. 7904.6.5.2.1 of the Uniform Fire Code (''residential streets, or within 500 (152.4 m) of a residential area, apartment, or hotel complex, educational facility, hospital or care facility'').

In this proceeding, AWHMT did not challenge the City's requirements that apply to a facility that stores hazardous materials, as opposed to the vehicles that move those materials. The City has not raised any specific issues relating to the storage of hazardous materials. Finally, in PD–14(R) RSPA did not consider requirements in the City's Fire Code as they apply to facilities that store hazardous materials.

As a general matter, the transportation of hazardous materials in commerce subject to the Federal hazardous materials transportation law and the HMR includes the storage of those materials ''incidental to [their] movement.'' 49 U.S.C. 5102(12). Accordingly, RSPA has stated that the HMR clearly apply to ''transportation-related storage.'' IR–19, Nevada Public Service Commission Regulations Governing Transportation of Hazardous Materials, 52 FR 24404, 24409 (June 30, 1987), decision on appeal, 53 FR 11600 (Apr. 7, 1988). And RSPA reiterated in PDs 8(R)—11(R) that the HMR apply to ''[s]torage that is incidental to transportation,'' which includes ''storage by a carrier that may occur between the time a hazardous material is offered for transportation and the time it reaches its intended destination and is accepted by the consignee.'' 60 FR at 8778. *See also* PD–12(R), New York Department of Environmental Conservation Requirements on the Transfer and Storage of Hazardous Wastes Incidental to Transportation, 60 FR 52527, 62541 (Dec. 6, 1995), decision on petition for reconsideration, 62 FR 15970, 15972 (April 3, 1997) (''transportation-related activities'' subject to the HMR include the interim storage of hazardous materials at a transfer facility). In contrast, ''RSPA does not regulate consignee storage, including the types of containers used to store hazardous materials that are no longer in transportation in commerce.'' PD–9(R), 60 FR at 8788.

RSPA has long encouraged States and localities to adopt and enforce requirements on the transportation of hazardous materials that are consistent with the HMR. *See, e.g.*, PD–12(R), 60 FR at 62530. This applies to storage that is incidental to the movement of hazardous materials in commerce, as well as the actual movement of those materials. The enforceability of non-Federal requirements on ''incidental'' storage depends on the consistency of those requirements with the HMR and, of course, the applicability of the requirements themselves in terms of exceptions such as Secs. 7901.1.1 and 8001.1.1 of the Uniform Fire Code.

As stated in PD–14(R), 63 FR at 67510, ''a State or local permit requirement is not *per se* preempted; rather, 'a permit itself is inextricably tied to what is required to get it.' '' This principle applies to the storage of hazardous materials in transportation as well as to the actual movement of these materials. IR–28, San Jose Restrictions on Storage of Hazardous Materials, 55 FR 8884, 8890 (Mar. 8, 1990), appeal dismissed as moot, 57 FR 41165 (Sept. 9, 1992).

With respect to permits for a facility where hazardous materials are stored in transportation, however, State requirements are preempted when they are ''so open-ended and discretionary that they authorize the [State] to approve storage prohibited by the HMR or prohibit storage authorized by the HMR.'' IR–19, 52 FR at 24410. The Court of Appeals for the Ninth Circuit agreed in *Southern Pac. Transp. Co.* v. *Public Serv. Comm'n*, 909 F.2d 352, 358 (9th Cir. 1980), that such State requirements create ''a separate regulatory regime for these activities [including storage in transportation], fostering confusion and frustrating Congress' goal of developing a uniform national scheme of regulation.''

Similarly, in IR–28, RSPA found that ''unfettered discretion * * * with respect to approval or disapproval of storage of hazardous materials incidental to the transportation thereof is inconsistent with the HMTA and the HMR.'' 55 FR at 8890. RSPA also noted that

> detailed information required to be provided concerning the identity and quantity of hazardous materials (and other materials) which a transportation carrier might store at its facility during a given year is impossible to compile and provide in advance because a common carrier is at the mercy of its customers, including the general public, who may without advance notice offer to the carrier virtually any quantity of any of the thousands of hazardous materials listed in, or covered by, the HMR.

*Id.* at 8891.

To decide this case, however, RSPA need not precisely delineate the incidental storage that is encompassed within the scope of ''transportation'' (as defined in Federal hazardous material transportation law) from that which is not. In its May 1997 comments, the City asked RSPA to find that the provisions challenged by AWHMT ''are not preempted.'' That is the determination made by RSPA in PD–14(R), and it is unclear that the City is ''aggrieved'' by RSPA's determination in PD–14(R). *See* 49 CFR 107.211(a). To the extent that the exceptions in Secs. 7901.1.1 and 8001.1.1 mean that provisions in the Uniform Fire Code do not apply to transportation of hazardous materials in commerce, including incidental storage, that result derives from the plain language of the Uniform Fire Code and not from any inconsistency with the HMR. That matter is separate and distinct from issues relating to whether the storage of a hazardous material is ''incidental to [its] movement,'' which will be considered in RSPA's rulemaking in Docket No. HM–223. ANPRM, 61 FR at 38524.

For all the reasons set forth above and in PD–14(R), 63 FR at 67507, there is no basis for RSPA to defer its determination in PD–14(R). Because of the concerns expressed in the City's petition for reconsideration, however, RSPA is clarifying that this determination applies only to the transportation of hazardous materials in commerce by a motor vehicle.

## IV. Ruling

RSPA denies the City's petition for reconsideration and affirms its December 7, 1998 determination that Federal hazardous material transportation law does not preempt requirements in the following sections of the Houston Fire Code because these requirements do not apply to the transportation of hazardous materials subject to the HMR:

Secs. 105.4, 105.8.f.3, 105.h.1, 106.1, 7901.3.1, and 8001.3.1., to the extent that these sections require a permit for a vehicle to transport hazardous materials in commerce within the City, including activities (such as loading, unloading, handling, and dispensing) that are encompassed within the scope of transportation, and including the requirements for inspection of the vehicle and payment of a fee in order to obtain a permit;

Secs. 209 and 8001.1.2, concerning the definition of ''hazardous materials'' as relevant to the permit requirements in Secs. 105.8.f.3 and 8001.3.1;

Sec. 7904.6.1, concerning requirements for the design and construction of tank vehicles used to transport a flammable or combustible liquid;

Sec. 7904.6.3.4, concerning physical bonding during the loading of a tank vehicle with a flammable or combustible liquid, to prevent the accumulation of static charges;

Sec. 7904.6.5.2.1, prohibiting unattended parking of tank vehicles used for flammable or combustible liquids at specific locations or ''at any other place that would, in the opinion of the chief, present an extreme life hazard''; and

Sec. 7904.6.7, requiring a fire extinguisher with a minimum rating of 2–A, 20–B:C on board a tank vehicle used for flammable or combustible liquids.

## V. Final Agency Action

In accordance with 49 CFR 107.211(d), this decision constitutes RSPA's final agency action on AWHMT's application for a determination of preemption as to certain requirements in the Houston Fire Code concerning the transportation of hazardous materials, including storage and handling that are a part of transportation.

Issued in Washington, DC on June 17, 1999.

**Alan I. Roberts,**

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 99–16026 Filed 6–23–99; 8:45 am]

BILLING CODE 4910–60–P

## UNITED STATES INSTITUTE OF PEACE

### Announcement of the Spring Unsolicited Grant Competition Grant Program

**AGENCY:** United States Institute of Peace.

**ACTION:** Notice.

**SUMMARY:** The Agency Announces its Upcoming Fall Unsolicited Grant Deadline, which offers support for research, education and training, and the dissemination of information on international peace and conflict resolution.

**DEADLINE:** October 1, 1999.

**DATES:** Application Material Available Upon Request. Receipt Date for Return of Application: October 1, 1999. Notification of Awards: February 2000.

**ADDRESSES:** For Application Package: United States Institute of Peace, Grant Program • Unsolicited Grants, 1200 17th Street, NW, • Suite 200, Washington, DC 20036–3011, (202) 429–3842 (phone), (202) 429–6063 (fax), (202) 457–1719 (TTY), Email: grant__program@usip.org.

Applications also available on-line at our web site: www.usip.org.

**FOR FURTHER INFORMATION CONTACT:** The Grant Program; Phone (202) 429–3842.

Dated: June 19, 1999.

**Bernice J. Carney,**

*Director, Office of Administration.*

[FR Doc. 99–16066 Filed 6–23–99; 8:45 am]

BILLING CODE 6820–AR–M

Federal Register

Thursday
June 24, 1999

## Part II

# Environmental Protection Agency

**40 CFR Part 52**

**Interim Final Stay of Action on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport; Interim Final Rule**

**40 CFR Part 52**

**Findings of Significant Contribution and Rule-making on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport; Proposed Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[FRL–6364–4]**

**RIN 2060–AH88**

## Interim Final Stay of Action on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport

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

**ACTION:** Interim final rule.

**SUMMARY:** In today's action, EPA is temporarily staying, until November 30, 1999, the effectiveness of a final rule regarding petitions filed under section 126 of the Clean Air Act (CAA). Eight Northeastern States filed the petitions seeking to mitigate transport of one of the main precursors of ground-level ozone, nitrogen oxides ($NO_X$), across State boundaries. On April 30, 1999, EPA made final determinations that portions of the petitions are technically meritorious.

Subsequently, two recent rulings of the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) have affected EPA's rulemaking under section 126. In one ruling, the court remanded the 8-hour national ambient air quality standard (NAAQS) for ozone, which formed part of the underlying technical basis for certain of EPA's determinations under section 126. In a separate action, the D.C. Circuit granted a motion to stay the State implementation plan (SIP) submission deadlines established in a related EPA action, the $NO_X$ State implementation plan call ($NO_X$ SIP call). In the April 30 notice of final rulemaking (NFR), EPA had deferred making final findings under section 126 as long as States and EPA remained on schedule to meet the requirements of the $NO_X$ SIP call.

In response to these rulings, EPA is today staying the effectiveness of the April 30 NFR for a short period while EPA conducts a notice-and-comment rulemaking to address further issues arising from the court rulings.

**EFFECTIVE DATE:** This interim final rule is effective on July 26, 1999, until November 30, 1999.

**ADDRESSES:** Documents relevant to this action are available for inspection at the Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–97–43, U.S. Environmental Protection Agency, 401 M Street SW, room M–1500, Washington, DC 20460, telephone (202) 260–7548 between 8:00 a.m. and 5:30 p.m., Monday though Friday, excluding legal holidays. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning today's action should be addressed 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 at oldham.carla@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### Availability of Related Information

The official record for the section 126 rulemaking completed April 30, 1999, as well as the public version of the record, has been established under docket number A–97–43 (including comments and data submitted electronically as described below). EPA is adding a new section to that docket for purposes of today's interim final rule. The public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information, is available for inspection from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in **ADDRESSES** at the beginning of this document. In addition, the **FEDERAL REGISTER** rulemakings and associated documents are located at http://www.epa.gov/ttn/rto/126.

### Outline



## I. Background

### *A. Findings Under Section 126 Petitions To Reduce Interstate Ozone Transport*

On April 30, 1999, EPA took final action on petitions filed by eight Northeastern States seeking to mitigate what they describe as significant transport of one of the main precursors of ground-level ozone, $NO_X$, across State boundaries (64 FR 28250, May 25, 1999). The eight States (Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Pennsylvania, and Vermont) filed the petitions under section 126 of the CAA. Section 126 provides that if EPA finds that identified stationary sources emit in violation of the section 110(a)(2)(D) prohibition on emissions that significantly contribute to ozone nonattainment or maintenance problems in a petitioning State, EPA is authorized to establish Federal emissions limits for the sources.

In the April 30 NFR, EPA made final determinations that portions of six of these petitions are technically meritorious. Specifically, with respect to the 1-hour and 8-hour NAAQS for ozone, EPA made affirmative technical determinations that certain new and existing emissions sources in certain States emit or would emit $NO_X$ in amounts that contribute significantly to nonattainment in, or interfere with maintenance by, one or more States that submitted petitions in 1997–1998 under section 126. The sources that emit $NO_X$ in amounts that significantly contribute to downwind nonattainment problems are large electric generating units (EGUs) and large non-EGUs for which highly cost-effective controls are available.

All of the eight petitioning States requested findings under section 126 under the 1-hour standard, and five of the petitioning States also requested findings under the 8-hour standard. The EPA took action under the 1-hour and 8-hour standards as specifically requested in each State's petition. The EPA made independent technical determinations for each standard with respect to the individual petitions. (See the part 52 regulatory text in the April 30, 1999 NFR.) Under the 1-hour standard, in aggregate for the 8 petitions, EPA made affirmative technical determinations of significant contribution for sources located in the following States: Delaware, Indiana, Kentucky, Maryland, Michigan, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Virginia, West Virginia, and the District of Columbia. Under the 8-hour standard, in aggregate for the five petitions, EPA made affirmative

technical determinations of significant contribution for sources located in the same States as under the 1-hour standard plus seven additional States: Alabama, Connecticut, Illinois, Massachusetts, Missouri, Rhode Island, and Tennessee.

The EPA also provided that the portions of the petitions for which EPA made affirmative technical determinations would be automatically deemed granted or denied at certain later dates pending certain actions by the States and EPA regarding State submittals in response to the final $NO_X$ SIP call. Interpreting the interplay between sections 110 and 126, EPA believes that a State's compliance with the $NO_X$ SIP call would eliminate the basis for a finding under section 126 for sources located in that State, under these petitions. See 64 FR 28271–28274. As a consequence, EPA concluded that it was appropriate to structure its action on the section 126 petitions to account for the existence of the $NO_X$ SIP call, given that it had an explicit and expeditious schedule for compliance. See 64 FR 28274–28277.

Under EPA's interpretation of section 126 of the CAA, a source or group of sources is emitting in violation of the prohibition of section 110(a)(2)(D)(i) where the applicable SIP fails to prohibit (and EPA has not remedied this failure through a FIP) a quantity of emissions from that source or group of sources that EPA has determined contributes significantly to nonattainment or interferes with maintenance in a downwind State. See 64 FR 28271–28274. Under both the section 126 petitions and the $NO_X$ SIP call, EPA was operating on basically the same set of facts regarding the same pollutants and largely the same amounts of upwind reductions affecting the same downwind States. Thus, where a State has complied with the $NO_X$ SIP call and EPA has approved its SIP revision, EPA would not find that sources in that State were emitting in violation of the prohibition of section 110 and therefore would not subject those sources to a Federal remedy under section 126. See 64 FR 28271–28274.

In the absence of the $NO_X$ SIP call, EPA would simply have made a finding under section 126 in the final rule as to whether sources named in the petitions were emitting in violation of the prohibition of section 110. However, under the $NO_X$ SIP call there was both a requirement for States to reduce their contribution to downwind nonattainment problems and an explicit and expeditious schedule for States to do so. In light of this existing requirement and a reasonable expectation that States would comply with it within a short and known time frame, EPA believed it was reasonable to make final only technical determinations as to which sources would be in violation of the prohibition of section 110 if the States or EPA failed to meet a schedule based on the schedule established in the $NO_X$ SIP call. See 64 FR 28274–28277. Deferring the actual findings under section 126 allowed States subject to the $NO_X$ SIP call an opportunity to comply with the $NO_X$ SIP call before triggering the findings.

The EPA coordinated its section 126 findings with the $NO_X$ SIP call compliance schedule in the following manner. EPA provided that for each source for which EPA had made an affirmative technical determination of significant contribution, EPA would be deemed to find that the source emits or would emit $NO_X$ in violation of the prohibition of section 110(a)(2)(D)(i) under the following circumstances. First, the finding was deemed to be made for such sources in a State if by November 30, 1999, EPA had not either (a) proposed to approve a State's SIP revision to comply with the $NO_X$ SIP call or (b) promulgated a FIP for the State. Second, the finding was deemed to be made for such sources in a State if by May 1, 2000, EPA had not either (a) approved a State's SIP revision to comply with the $NO_X$ SIP call or (b) promulgated implementation plan provisions meeting the section 110(a)(2)(D)(i) requirements. Upon EPA's approval of a State's SIP revision to comply with the $NO_X$ SIP call or promulgation of a FIP, the final rule provided that corresponding portions of the petitions would automatically be deemed denied. Also, if a finding is deemed to be made, it would be deemed to be withdrawn, and the corresponding portions of the petitions would also be deemed to be denied, upon EPA's approval of a State's SIP revision to comply with the $NO_X$ SIP call or promulgation of a FIP. See 40 CFR 52.34(i).

*B. Effect of Court Decisions*

1. 8-Hour Ozone NAAQS

On May, 14, 1999, the D.C. Circuit issued an opinion questioning the constitutionality of the CAA authority to review and revise the NAAQS, as applied in EPA's revision to the ozone and particulate matter NAAQS. The Court stopped short of finding the statutory grant of authority unconstitutional, instead providing EPA with another opportunity to develop a determinate principle for promulgating NAAQS under the statute. The court continued by addressing other issues, including EPA's authority to classify and set attainment dates for a revised ozone standard. Based on the statutory provisions regarding classifications and attainment dates under sections 172(a) and 181(a), the court's ruling curtailed EPA's ability to require States to comply with a more stringent ozone NAAQS. The EPA has recommended to the Department of Justice that the government seek rehearing on this and other portions of the court's opinion. However, EPA also believes that unless and until the court's decision is revised or vacated, EPA should not continue implementation efforts with respect to the 8-hour standard that could be construed as inconsistent with the court's ruling. This reservation would not apply to any EPA actions based on the 1-hour standard.

2. Stay of Compliance Schedule for $NO_X$ SIP Call

On May 25, 1999, the D.C. Circuit issued a partial stay of the submission of the SIP revisions required under the $NO_X$ SIP call. The $NO_X$ SIP call had required submission of the SIP revisions by September 30, 1999. State Petitioners challenging the $NO_X$ SIP Call moved to stay the submission schedule until April 27, 2000. The D.C. Circuit issued a stay of the SIP submission deadline pending further order of the court. *Michigan* v. *EPA*, No. 98–1497 (D.C. Cir. May 25, 1999) (order granting stay in part).

**II. Interim Final Stay**

In light of the change in circumstances created by the court rulings, EPA believes it is appropriate to stay temporarily the section 126 April 30 NFR, while proceeding with a notice-and-comment rulemaking to address the issues raised by the rulings. In particular, with respect to the ruling on the 8-hour NAAQS, although EPA continues to believe that the 8-hour NAAQS has a compelling basis in public health protection, EPA believes that the court decision creates substantial uncertainty concerning the statutory authority both for revising the NAAQS and for implementing any such revised NAAQS. Accordingly, EPA believes that the portion of the section 126 April 30 NFR that requires sources in upwind States to implement controls for the purpose of reducing their impact on downwind 8-hour nonattainment areas should be stayed on an interim basis while EPA takes public comment on, and further considers, the matter.

With respect to the court's decision staying the SIP submission schedule for the $NO_X$ SIP call, EPA believes it is no

longer appropriate to link its findings under section 126 to the compliance schedule for the $NO_X$ SIP call by deferring making final findings as long as States and EPA are meeting that schedule. EPA believed that, while not explicitly contemplated by the statutory language, its initial approach was a reasonable way to address the requirement to act on the section 126 petitions in the same general time frame as that in which States were required to comply with the $NO_X$ SIP call. Under this approach, EPA gave upwind States an opportunity to address the ozone transport problem themselves, but did not delay implementation of the remedy beyond May 1, 2003. The EPA had determined that requiring controls to be in place for the 2003 summer ozone season, i.e., by May 1, 2003, would bring about downwind compliance ''as expeditiously as practicable,'' as required by Title I, and would require sources emitting in violation of the prohibition of section 110 to reduce emissions ''as expeditiously as practicable,'' as required by section 126. Now, in the absence of any requirement that States submit SIP revisions under the $NO_X$ SIP call by September 30, 1999, as previously required, it is unlikely that States will submit such revisions in time for EPA to propose approval by November 30, 1999, and finalize approval by May 1, 2000. It is not possible or appropriate to coordinate the section 126 action with the requirements of the $NO_X$ SIP call without a schedule for compliance with the $NO_X$ SIP call. Absent such action, deferring final action on the petitions and providing an automatic trigger mechanism tied to specific dates for action on the SIP revisions no longer makes sense.

In its upcoming proposal, EPA plans to address the concerns raised by the court rulings in the following manner. First, EPA plans to propose to stay indefinitely the affirmative technical determinations with respect to sources implicated on the basis of the 8-hour standard, pending further developments in the NAAQS litigation.[1] Second, EPA plans to propose to delete the automatic trigger mechanism and simply take final action granting or denying the petitions with respect to the sources for which EPA has made affirmative technical determinations. EPA intends to take final action on proposed changes by November 30, 1999. If necessary, however, as EPA plans to discuss in the proposal, EPA intends to extend this stay to the extent needed to ensure that the stay does not expire before EPA completes final action on the proposed changes.

[1] At this time, in light of the court's order staying the SIP submission deadline under the $NO_X$ SIP call, EPA does not see a need to take similar action for the 8-hour NAAQS portions of the $NO_X$ SIP call rule.

## III. Rulemaking Procedures

The EPA is taking this action as an interim final rule without benefit of prior proposal and public comment because EPA finds that the Administrative Procedure Act (APA) good cause exception to the requirement for notice-and-comment rulemaking applies here. See 5 U.S.C. 553(b)(B). EPA believes that providing for notice-and-comment rulemaking before taking this action is impracticable and contrary to the public interest. In light of the impact that the court rulings have on key elements of the April 30 NFR, it would be contrary to the public interest for the rule to remain in effect while EPA conducts rulemaking to address the consequences of the court rulings on the April 30 NFR.

In particular, the April 30 NFR imposes a potential compliance burden on a number of sources based on the 8-hour ozone standard. While EPA disagrees with the holding and expects to take further action to address it, the form of the court's ruling on that standard and the status of the litigation have created substantial uncertainty as to whether and when these sources may become subject to control requirements under section 126 based on the 8-hour standard. Thus, EPA believes it is important to immediately inform these sources of the Agency's intent regarding their potential control obligations. In addition, States may view the automatic trigger mechanism now in place as pressuring them to comply with the $NO_X$ SIP call schedule, even though that schedule has been stayed by the court. The EPA believes that preserving the linkage with the $NO_X$ SIP call deadlines is inappropriate in light of the court's decision staying the submission deadlines, and might be viewed by the court as placing improper pressure on States. Today's action is necessary to immediately eliminate any such concerns. It would be impracticable to achieve these purposes of immediate clarification, and hence, would also be contrary to the public interest, if this action were delayed by providing for prior public notice-and-comment.

In addition, this interim final stay will expire in approximately five months and this action will not have any effect on the ultimate deadlines for control of emissions. EPA will soon follow this action with a proposal requesting comment on changes to the April 30 NFR consistent with the approach taken here to address the court decisions. In light of the short time period that this interim stay is in effect and the imminent rulemaking to take comment on a long-term resolution of the issues this interim stay is intended to address, EPA believes that providing for prior public comment is unnecessary.

This interim final stay is effective as of July 26, 1999. Given the need to provide immediate clarification regarding the effects of the court decisions and the fact that this action relieves a potential burden on certain affected parties, EPA finds good cause to make this rule effective July 26, 1999, which is the effective date of the rule stayed by this action. The EPA believes this is consistent with 5 U.S.C. 553(d)(1) and (3), as well as with 5 U.S.C. 801 and 808. While this interim final stay is effective for a limited period, EPA will also conduct full notice-and-comment rulemaking on similar changes to the April 30 NFR to address the court decisions.

## IV. Status of Upcoming Related Actions

### *A. Section 126 Control Remedy NFR*

The EPA proposed to implement a new Federal $NO_X$ Budget Trading Program as the section 126 control remedy (63 FR 56292, October 21, 1998). The program will apply to all sources for which EPA makes a final section 126 finding. The EPA intended to finalize all aspects of the section 126 remedy by April 30, 1999. However, as discussed in the April 30 NFR, EPA needed additional time to evaluate the numerous comments it received on the trading program proposal and the source-specific emission inventory data. In the April 30 NFR, EPA finalized the general parameters of the section 126 remedy, including the decision to implement a capped, market-based trading program, identification of the sources subject to the program, specification of the basis for the total tonnage cap, and specification of the compliance date. The EPA committed to finalizing the details of the trading program, including the unit-by-unit allocations, by July 15, 1999.

As discussed in Section I.E. of the April 30 NFR, EPA entered into a consent decree with the petitioning States that, among other things, committed the EPA to issuing a final section 126 remedy by April 30, 1999. In order to satisfy that consent decree, EPA promulgated, on an interim basis, emission limitations that would be imposed on individual sources only in the event a finding under section 126 was automatically deemed made and

EPA had not yet finalized the Federal $NO_X$ Budget Trading Program regulations. The EPA emphasized it did not expect this default remedy, set forth in § 52.34(k), ever to be applied because the trading program would be finalized in July 1999, while the earliest a section 126 finding would be made was November 30 of the same year.

Because of the need to conduct a further rulemaking to address the impact of the recent court decisions on the section 126 rulemaking, EPA will be delaying the promulgation of the Federal $NO_X$ Budget Trading Program for a short period of time. The EPA now intends to finalize the trading program and make the section 126 findings in the same rulemaking action. At that time, EPA would delete the default remedy from the rule. Therefore, under these new circumstances, the default remedy would also never be applied.

*B. New Petitions*

The EPA has recently received two additional section 126 petitions from the States of New Jersey (dated April 14, 1999) and Maryland (dated April 29, 1999). (See Docket A–99–21.) These petitions seek findings under both the 1-hour and 8-hour standards for large EGUs and large non-EGUs located in specified upwind States. The EPA is currently developing a schedule to take action on at least the 1-hour portions of these new section 126 petitions. Under section 126, EPA is required to take action to grant or deny the petitions within 60 days of receipt. However, section 307(d) of the CAA authorizes EPA to extend the timeframe for action up to 6 months if EPA determines that the extension is necessary to meet the CAA's rulemaking requirements. The EPA is issuing a final rule determining that a 6-month extension is necessary for both of the new petitions to allow EPA adequate time to develop the proposals and to provide the public sufficient time to comment. The EPA is also evaluating these petitions in light of the recent court decisions.

## V. Administrative Requirements

*A. Executive Order 12866: Regulatory Impact Analysis*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) have an annual 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;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

The EPA believes that this interim final stay of pre-existing regulatory requirements is not a ''significant regulatory action'' because it relieves, rather than imposes, regulatory requirements, and raises no novel legal or policy issues.

*B. Impact on Small Entities*

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), provides that whenever an agency is required to publish a general notice of final rulemaking, it must prepare and make available a final Regulatory Flexibility Analysis, unless it certifies that the proposed rule, if promulgated, will not have ''a significant economic impact on a substantial number of small entities.''

This rule will not have a significant impact on a substantial number of small entities because it does not create any new requirements. Therefore, because this rule does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

*C. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that ''includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more * * * in any one year.'' A ''Federal mandate'' is defined to include a ''Federal intergovernmental mandate'' and a ''Federal private sector mandate'' (2 U.S.C. 658(6)). A ''Federal intergovernmental mandate,'' in turn, is defined to include a regulation that ''would impose an enforceable duty upon State, local, or tribal governments (2 U.S.C. 658(5)(A)(i)), except for, among other things, a duty that is ''a condition of Federal assistance (2 U.S.C. 658(5)(A)(i)(I)). A ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector,'' with certain exceptions (2 U.S.C. 658(7)(A)).

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

*D. Paperwork Reduction Act*

This interim final rule does not impose any new information collection requirements. Therefore, an Information Collection Request document is not required.

*E. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks*

The Executive Order 13045 applies to any rule that EPA determines is (1) ''economically significant'' as defined under Executive Order 12866, and (2) addressed an environmental health or safety risk that has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This interim final rule is not subject to Executive Order 13045, entitled ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant under E.O. 12866 and does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

*F. Executive Order 12898: Environmental Justice*

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or

environmental effects of its programs, policies, and activities on minorities and low-income populations. This Federal action imposes no new requirements and will not delay achievement of emissions reductions under existing requirements. Accordingly, no disproportionately high or adverse effects on minorities or low-income populations result from this action.

*G. Executive Order 12875: Enhancing the Intergovernmental Partnership*

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those Governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

*H. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. No. 104–113, directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This interim final rule does not involve the promulgation of any new technical standards. Therefore, NTTAA requirements are not applicable to today's rule.

*J. Judicial Review*

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by EPA. This Section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit (i) when the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.''

For the reasons discussed in the April 30 NFR, the Administrator determined that final action regarding the section 126 petitions is of nationwide scope and effect for purposes of section 307(b)(1). Thus, any petitions for review of final actions regarding the section 126 rulemaking must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

*K. Congressional Review Act*

The Congressional Review Act (CRA), 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. Section 808 of the CRA provides an exception to this requirement. For any rule for which an agency for good cause finds that notice and comment are impracticable, unnecessary, or contrary to the public interest, the rule may take effect on the date set by the Agency. The 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**. This action is not a ''major rule'' as defined by 5 U.S.C. § 804(2). As EPA is finding good cause to promulgate this rule without prior notice and comment, this rule will be effective July 26, 1999.

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

Environmental protection, Air pollution control, Emissions trading, Nitrogen oxides, Ozone transport, Reporting and recordkeeping requirements.

Dated: June 11, 1999.

**Carol M. Browner,**

*Administrator.*

For the reasons set forth in the preamble, part 52 of chapter 1 of title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

## Subpart A—General Provisions

2. Section 52.34 is amended by adding paragraph (l) to read as follows:

**§ 52.34 Action on petitions submitted under section 126 relating to emissions of nitrogen oxides.**

* * * * *

(l) *Temporary stay of rules.* Notwithstanding any other provisions of this subpart, the effectiveness of 40 CFR 52.34 is stayed from July 26, 1999 until November 30, 1999.

[FR Doc. 99–15712 Filed 6–23–99; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[FRL–6364–7]**

## Findings of Significant Contribution and Rulemaking on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport

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

**ACTION:** Proposed rule.

**SUMMARY:** In today's action, EPA is proposing to amend in two respects a final rule it recently issued under section 126 of the Clean Air Act (CAA), acting on certain petitions related to interstate transport of pollutants. First, EPA is proposing to grant portions of those petitions addressed in that rule. Second, EPA is proposing to stay indefinitely certain affirmative technical determinations made in that rule related to such petitions, pending further developments in ongoing litigation. EPA recently promulgated, and is publishing elsewhere in this issue, an interim final stay of the same rule effective until November 30, 1999. This proposal takes comment on a longer-term resolution of the issues temporarily addressed by the interim final stay.

The final rule addressed petitions filed by eight Northeastern States seeking to mitigate transport of one of the main precursors of ground-level ozone, nitrogen oxides ($NO_X$), across State boundaries. On April 30, 1999, EPA made final determinations that portions of the petitions are technically meritorious.

Subsequently, two recent rulings of the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) have affected EPA's rulemaking under section 126. In one ruling, the court remanded the 8-hour National Ambient Air Quality Standard (NAAQS) for ozone, which formed part of the underlying technical basis for certain of EPA's determinations under section 126. In a separate action, the D.C. Circuit granted a motion to stay the State implementation plan (SIP) submission deadlines established in a related EPA action, the $NO_X$ State implementation plan call ($NO_X$ SIP call). In the April 30 notice of final rulemaking (NFR), EPA had deferred making final findings under section 126 as long as States and EPA stayed on schedule to meet the requirements of the $NO_X$ SIP call.

In response to these rulings, EPA recently promulgated, and is publishing elsewhere in this issue, an interim final stay of the effectiveness of the April 30 NFR until November 30, 1999. With this action, EPA is proposing two changes to the April 30 NFR to address the issues raised by the rulings. EPA is also pursuing additional legal remedies concerning these rulings.

**DATES:** The comment period on this notice of proposed rulemaking (NPR) ends on August 9, 1999. Comments must be postmarked by the last day of the comment period and sent directly to the Docket Office listed in **ADDRESSES** (in duplicate form if possible). A public hearing will be held on July 8, 1999, in Washington, DC. Please refer to **SUPPLEMENTARY INFORMATION:** For additional information on the comment period and public hearing.

**ADDRESSES:** Comments may be submitted to the Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–97–43, U.S. Environmental Protection Agency, 401 M Street SW, room M–1500, Washington, DC 20460, telephone (202) 260–7548. Comments and data may also be submitted electronically by following the instructions under **SUPPLEMENTARY INFORMATION** of this document. No confidential business information (CBI) should be submitted through e-mail.

Documents relevant to this action are available for inspection at the Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–97–43, U.S. Environmental Protection Agency, 401 M Street SW, room M–1500, Washington, DC 20460, telephone (202) 260–7548 between 8:00 a.m. and 5:30 p.m., Monday though Friday, excluding legal holidays. A reasonable fee may be charged for copying.

The public hearing will be held at the EPA Auditorium at 401 M Street SW, Washington, DC, 20460.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning today's action should be addressed 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 at oldham.carla@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### Public Hearing

The EPA will conduct a public hearing on this NPR on July 8, 1999, beginning at 9:00 a.m. The hearing will be held at the EPA Auditorium at 401 M Street SW, Washington, DC, 20460. The metro stop is Waterfront, which is on the green line. Persons planning to present oral testimony at the hearings should notify JoAnn Allman, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–1815, e-mail allman.joann@epa.gov, no later than July 6, 1999. Oral testimony will be limited to five minutes each. Any member of the public may file a written statement by the close of the comment period. Written statements (duplicate copies preferred) should be submitted to Docket No. A–97–43 at the above address. The hearing schedule, including lists of speakers, will be posted on EPA's webpage at http://www.epa.gov/airlinks prior to the hearing. A verbatim transcript of the hearing, if held, and written statements will be made available for copying during normal working hours at the Air and Radiation Docket and Information Center at the above address.

### Availability of Related Information

The official record for the section 126 rulemaking completed April 30, 1999, as well as the public version of the record, has been established under docket number A–97–43 (including comments and data submitted electronically as described below). EPA has added new sections to that docket for purposes of the interim final stay of that rule and today's proposed rulemaking. The public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information, is available for inspection from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The rulemaking record is located at the address in **ADDRESSES** at the beginning of this document. In addition, the **Federal Register** rulemakings and associated documents are located at http://www.epa.gov/ttn/rto/126.

**Outline**

## I. Background

### *A. Findings Under Section 126 Petitions To Reduce Interstate Ozone Transport*

On April 30, 1999, EPA took final action on petitions filed by eight Northeastern States seeking to mitigate what they describe as significant transport of one of the main precursors of ground-level ozone, $NO_X$, across State boundaries (64 FR 28250, May 25, 1999). The eight States (Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Pennsylvania, and Vermont) filed the petitions under section 126 of the Clean Air Act (CAA). Section 126 provides that if EPA finds that identified stationary sources emit in violation of the section 110(a)(2)(D) prohibition on emissions that significantly contribute to ozone nonattainment or maintenance problems in a petitioning State, EPA is authorized to establish Federal emissions limits for the sources.

In the April 30 NFR, EPA made final determinations that portions of six of these petitions are technically meritorious. Specifically, with respect to the 1-hour and 8-hour NAAQS for ozone, EPA made affirmative technical determinations that certain new and existing emissions sources in certain States emit or would emit $NO_X$ in amounts that contribute significantly to nonattainment in, or interfere with maintenance by, one or more States that submitted petitions in 1997–1998 under section 126. The sources that emit $NO_X$ in amounts that significantly contribute to downwind nonattainment problems are large electric generating units (EGUs) and large non-EGUs for which highly cost-effective controls are available.

All of the eight petitioning States requested findings under section 126 under the 1-hour standard, and five of the petitioning States also requested findings under the 8-hour standard. The EPA took action under the 1-hour and 8-hour standards as specifically requested in each State's petition. The EPA made independent technical determinations for each standard with respect to the individual petitions. (See the part 52 regulatory text in the April 30, 1999 NFR.) Under the 1-hour standard, in aggregate for the 8 petitions, EPA made affirmative technical determinations of significant contribution for sources located in the following States and the District of Columbia: Delaware, Indiana, Kentucky, Maryland, Michigan, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia. Under the 8-hour standard, in aggregate for the five petitions, EPA made affirmative technical determinations of significant contribution for sources located in the same States and the District of Columbia as under the 1-hour standard plus seven additional States: Alabama, Connecticut, Illinois, Massachusetts, Missouri, Rhode Island, and Tennessee.

The EPA also provided that the portions of the petitions for which EPA made affirmative technical determinations would be automatically deemed granted or denied at certain later dates pending certain actions by the States and EPA regarding State submittals in response to the final $NO_X$ SIP call. Interpreting the interplay between sections 110 and 126, EPA stated in the April 30 NFR that a State's compliance with the $NO_X$ SIP call would eliminate the basis for a finding under section 126 based on these petitions for sources located in that State. See 64 FR 28271–28274. As a consequence, EPA concluded it was appropriate to structure its action on the section 126 petitions to account for the existence of the $NO_X$ SIP call, given that it had an explicit and expeditious schedule for compliance. See 64 FR 28274–28277.

Under EPA's interpretation of section 126 of the CAA, a source or group of sources is emitting in violation of the prohibition of section 110(a)(2)(D)(i) where the applicable SIP fails to prohibit (and EPA has not remedied this failure through a FIP) a quantity of emissions from that source or group of sources that EPA has determined contributes significantly to nonattainment or interferes with maintenance in a downwind State. See 64 FR 28271–28274. Under both the section 126 petitions and the $NO_X$ SIP call, EPA was operating on basically the same set of facts regarding the same pollutants and largely the same amounts of upwind reductions affecting the same downwind States. Thus, where a State has complied with the $NO_X$ SIP call and EPA has approved its SIP revision, EPA would not find that sources in that State were emitting in violation of the prohibition of section 110 and therefore subject to a Federal remedy under section 126. See 64 FR 28271–28274.

In the absence of the $NO_X$ SIP call, EPA would simply have made a finding under section 126 in the final rule as to whether sources named in the petitions were emitting in violation of the prohibition of section 110. However, under the $NO_X$ SIP call there was both a requirement for States to reduce their contribution to downwind nonattainment problems and an explicit and expeditious schedule for States to do so. In light of this existing requirement and a reasonable expectation that States would comply with it within a short and known timeframe, EPA believed it was reasonable to make final only technical determinations as to which sources would be in violation of the prohibition of section 110 if the States or EPA failed to meet a schedule for action based on the schedule established in the $NO_X$ SIP call. See 64 FR 28274–28277. Deferring the actual findings under section 126 allowed States subject to the $NO_X$ SIP call an opportunity to comply with the $NO_X$ SIP call before triggering the findings.

The EPA coordinated its section 126 findings with the $NO_X$ SIP call compliance schedule in the following manner. EPA provided that for the sources for which EPA had made an affirmative technical determination of significant contribution, EPA would be deemed to find that the sources emit or would emit $NO_X$ in violation of the prohibition of section 110(a)(2)(D)(i) under the following circumstances. First, the finding was deemed to be made for such sources in a State if by November 30, 1999, EPA had not either (a) proposed to approve the State's SIP revision to comply with the $NO_X$ SIP call, or (b) promulgated a FIP for the State. Second, the finding was deemed to be made for such sources in a State if by May 1, 2000, EPA had not either (a) approved the State's SIP revision to comply with the $NO_X$ SIP call, or (b) promulgated implementation plan provisions meeting the section 110(a)(2)(D)(i) requirements. Upon EPA's approval of a State's SIP revision to comply with the $NO_X$ SIP call or promulgation of a FIP, the final rule provided that corresponding portions of the petitions will automatically be deemed denied. Also, if a finding is deemed to be made, it will be deemed to be withdrawn, and the corresponding portions of the petitions will also be deemed to be denied, upon EPA's approval of a State's SIP revision to

comply with the $NO_X$ SIP call or promulgation of a FIP. See 40 CFR 52.34(i).

*B. Effect of Court Decisions*

1. 8-Hour NAAQS

On May, 14, 1999, the D.C. Circuit issued an opinion questioning the constitutionality of the CAA authority to review and revise the NAAQS, as applied in EPA's revision to the ozone and particulate matter NAAQS. See *American Trucking Ass'ns* v. *EPA* No. 97–1441 and consolidated cases (D.C. Cir. May 14, 1999). The Court stopped short of finding the statutory grant of authority unconstitutional, instead providing EPA with another opportunity to develop a determinate principle for promulgating NAAQS under the statute. The court continued by addressing other issues, including EPA's authority to classify and set attainment dates for a revised ozone standard. Based on the statutory provisions regarding classifications and attainment dates under sections 172(a) and 181(a), the court's ruling curtailed EPA's ability to require States to comply with a more stringent ozone NAAQS. The EPA has recommended to the Department of Justice that the government seek rehearing on this and other portions of the court's opinion. However, EPA also believes that unless and until the court's decision is revised or vacated, EPA should not continue implementation efforts with respect to the 8-hour standard that could be construed as inconsistent with the court's ruling. This reservation would not apply to any EPA actions based on the 1-hour standard.

2. Stay of Compliance Schedule for $NO_X$ SIP Call

On May 25, 1999, the D.C. Circuit issued a partial stay of the submission of the SIP revisions required under the $NO_X$ SIP call. The $NO_X$ SIP call had required submission of the SIP revisions by September 30, 1999. State Petitioners challenging the $NO_X$ SIP Call moved to stay the submission schedule until April 27, 2000. The D.C. Circuit issued a stay of the SIP submission deadline pending further order of the court. *Michigan* v. *EPA*, No. 98–1497 (D.C. Cir. May 25, 1999) (order granting stay in part).

## II. Proposal

Elsewhere in this issue of the **Federal Register**, EPA is publishing an interim final stay of the April 30 NFR, effective from July 26, 1999, until November 30, 1999, to provide EPA time to address the effects of these two decisions on the April 30 NFR. As discussed below, EPA is proposing in this action to amend the April 30 NFR to address the issues raised by the court's rulings. The EPA is only soliciting comment on the specific changes proposed here in response to the court's rulings. The EPA is not reopening the remainder of the April 30 NFR for public comment and reconsideration.

The EPA expects to promulgate a final rule based on this proposal on or before November 30, 1999, when the interim stay expires. To address the possibility of any delay of this final rulemaking, however, EPA is also taking comment on an extension of the interim final stay of the April 30 NFR in the event that EPA needs more time to complete the final rule. The EPA does not expect to need to promulgate such an extension, but if it were necessary, EPA anticipates that a two- or three-month extension should suffice. Providing for a possible extension, if necessary, ensures that the automatic trigger deadlines now in place will not become effective through a lapse in the stay before EPA completes this rulemaking. Under this schedule, the 3-year compliance schedule for sources subject to an affirmative finding would still be triggered in time to ensure that the intended emissions reductions are achieved by the start of the 2003 ozone season, as described in the April 30 NFR.

*A. Indefinite Stay of Technical Determinations Based on the 8-Hour NAAQS Pending Further Litigation Developments*

The EPA's belief, as stated above, is that unless and until the court's decision is revised or vacated, EPA should not continue implementation efforts under section 126 with respect to the 8-hour standard that could be construed as inconsistent with the court's ruling. Given this position, EPA believes that the Agency should not now move forward with findings under section 126 based on the 8-hour standard. Thus, EPA is proposing to stay indefinitely the affirmative technical determinations based on the 8-hour standard, pending further developments in the NAAQS litigation.[1] This stay would affect the 8-hour petitions filed by the States of Maine, Massachusetts, Pennsylvania, New Hampshire, and Vermont. This stay would also affect the affirmative technical determinations under the 8-hour NAAQS made for sources located in the following States and the District of Columbia: Alabama, Connecticut, Delaware, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Missouri, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Tennessee, Virginia, and West Virginia. EPA made affirmative technical determinations only under the 8-hour NAAQS, and not under the 1-hour NAAQS for sources located in seven of these States. The seven states are Alabama, Connecticut, Illinois, Massachusetts, Missouri, Rhode Island, and Tennessee. This proposal would not affect EPA's affirmative technical determinations under the 1-hour standard, which apply to sources located in the following twelve States and the District of Columbia: Delaware, Indiana, Kentucky, Maryland, Michigan, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia.

*B. Findings Under Section 126 and Removal of Trigger Mechanism Based on $NO_X$ SIP Call Compliance Deadlines*

In light of the court's decision staying the compliance schedule for the $NO_X$ SIP call, EPA believes it is no longer appropriate to link its findings under section 126 to the compliance schedule for the $NO_X$ SIP call by deferring making final findings as long as States and EPA are meeting a schedule based on that schedule. EPA believed that, while not explicitly contemplated by the statutory language, its initial approach was a reasonable way to address the requirement to act on the section 126 petitions in the same general timeframe as that in which States were required to comply with the $NO_X$ SIP call. Under this approach, EPA gave upwind States an opportunity to address the ozone transport problem themselves, but did not delay implementation of the remedy beyond May 1, 2003. The EPA had determined that requiring controls to be in place for the 2003 summer ozone season, i.e., by May 1, 2003, would bring about downwind compliance ''as expeditiously as practicable,'' as required by Title I, and would require sources emitting in violation of the prohibition of section 110 to reduce emissions ''as expeditiously as practicable,'' as required by section 126. Now, in the absence of any requirement that States submit SIP revisions under the $NO_X$ SIP call by September 30, 1999, as previously required, it is highly unlikely that most States will submit such revisions in time for EPA to propose approval by November 30, 1999, and finalize approval by May 1, 2000. Because there is no schedule for compliance with the $NO_X$ SIP call, there is no longer a basis for the automatic

[1] At this time, in light of the court's order staying the SIP submission deadline under the $NO_X$ SIP call, EPA does not see a need to take similar action for the 8-hour portions of the $NO_X$ SIP call rule.

trigger deadlines provided in the final rule.

The EPA also does not believe it would be appropriate to further defer action on the section 126 petitions pending resolution of the $NO_X$ SIP call litigation. There is no specific deadline for the court to issue a decision in the litigation. It is possible that the litigation would not be resolved in time for EPA to make findings under section 126 by May 1, 2000, as EPA has determined would be necessary to require sources to comply with the remedy by May 1, 2003. The EPA has determined that sources are able to come into compliance with the section 110 requirement by May 1, 2003. Thus, delay beyond that date would not be consistent either with the section 126 requirement that sources achieve reductions as expeditiously as practicable or with the maximum three year timeframe for sources to achieve reductions contemplated by section 126. In the April 30 NFR EPA explained why it made sense to provide a short delay in making the final findings, given the $NO_X$ SIP call deadlines. This was a practical way to address the overlap between the actions that would be required under the $NO_X$ SIP call and under the section 126 petitions. Under the circumstances, this coordinated approach implemented two separate statutory provisions in a manner that attempted to carry out Congress' intent for each provision, without interpreting one as overriding the other. However, delaying action under section 126 without explicit and expeditious deadlines for making the findings would in effect subordinate section 126 to section 110. This approach would deny downwind States the remedy provided by section 126 within the timeframes clearly specified in that section. The EPA does not believe that the plain language of the statute supports such an approach.

In light of these circumstances, it no longer makes sense to defer final action on the petitions and provide an automatic trigger mechanism tied to a schedule for action on SIP revisions responding to the $NO_X$ SIP call. Thus, EPA is proposing to delete the automatic trigger mechanism for making findings and instead simply take final action making findings and granting or denying the petitions.[2] Specifically, for those sources for which it has made affirmative technical determinations, EPA is proposing to find that the sources are emitting in violation of section 110(a)(2)(D)(i)(I) and grant those portions of the petitions. Consistent with these proposed findings, EPA is proposing to remove the automatic trigger mechanism that provided that EPA would have made a finding that sources were emitting in violation of section 110(a)(2)(D)(i)(I) as of November 30, 1999 or as of May 1, 2000 if EPA had not proposed and finalized approval of SIP revisions complying with the $NO_X$ SIP call (or promulgated a FIP) by those dates.

The EPA is not proposing to change one aspect of the automatic trigger mechanism established in the April 30 NFR. This provision would apply not on any particular date, but in the situation where EPA has made a finding under section 126, but the State has subsequently submitted and EPA has approved a SIP revision complying with the $NO_X$ SIP call (or EPA has promulgated a FIP). This situation would arise if a state voluntarily chooses to revise its SIP consistent with the $NO_X$ SIP call, including using the compliance date of May 1, 2003. The final rule provided that after a finding has been made with respect to a particular source or group of sources, the finding will be deemed to be withdrawn, and the corresponding part of the relevant petitions denied, if EPA approves a SIP revision or promulgates a FIP for the relevant State that complies with the $NO_X$ SIP call, including the compliance dates specified in the $NO_X$ SIP call. The EPA is not proposing to change this provision. See 64 FR 28275 for further discussion.

## III. Status of Upcoming Related Actions

### *A. Section 126 Control Remedy NFR*

The EPA proposed to implement a new Federal $NO_X$ Budget Trading Program as the section 126 control remedy (63 FR 56292; October 21, 1998). The program will apply to all sources for which EPA makes a final section 126 finding. The EPA intended to finalize all aspects of the section 126 remedy by April 30, 1999. However, as discussed in the April 30 NFR, EPA needed additional time to evaluate the numerous comments it received on the trading program proposal and the source-specific emission inventory data. In the April 30 NFR, EPA finalized the general parameters of the section 126 remedy, including the decision to implement a capped, market-based trading program, identification of the sources subject to the program, specification of the basis for the total tonnage cap, and specification of the compliance date. The EPA committed to finalizing the details of the trading program, including the unit-by-unit allocations by July 15, 1999.

As discussed in Section I.E. of the April 30 NFR, EPA entered into a consent decree with the petitioning States that, among other things, committed the EPA to issuing a final section 126 remedy by April 30, 1999. In order to satisfy that consent decree, EPA promulgated, on an interim basis, emission limitations that would be imposed on individual sources only in the event a finding under section 126 was automatically deemed made and EPA had not yet finalized the Federal $NO_X$ Budget Trading Program regulations. The EPA emphasized it did not expect this default remedy, set forth in section 52.34(k), ever to be applied because the trading program would be finalized in July 1999, while the earliest a section 126 finding would be made was November 30 of the same year.

Because of the need to conduct this further rulemaking to address the impact of the recent court decisions on the section 126 rulemaking, EPA will be delaying the promulgation of the Federal $NO_X$ Budget Trading Program for a short period of time. The EPA now intends to finalize the trading program and make the section 126 findings in the same rulemaking action. At that time, EPA would delete the default remedy from the rule. Therefore, under these new circumstances, the default remedy would also never be applied.

### *B. New Petitions*

The EPA has recently received three additional section 126 petitions from the States of New Jersey (dated April 14, 1999), Maryland (dated April 29, 1999), and Delaware (dated June 8, 1999). (See Docket A–99–21.) These petitions seek findings under both the 1-hour and 8-hour standards for large EGUs and large non-EGUs located in specified upwind States. The EPA is currently developing a schedule to take action on at least the 1-hour portions of these new section 126 petitions. Under section 126, EPA is required to take action to grant or deny the petitions within 60 days of receipt. However, section 307(d) of the CAA authorizes EPA to extend the timeframe for action up to 6 months if EPA determines that the extension is necessary to meet the CAA's rulemaking requirements. The EPA has issued a final rule determining that a 6-month extension for action on these petitions is necessary to allow EPA adequate time to develop the proposals and to provide the public sufficient time to comment. The EPA is also evaluating these

[2] Under today's proposal, these findings would not be effective with respect to the sources in the seven states for which EPA is proposing to stay the affirmative technical determinations, i.e., those sources for which the determinations were based on the 8-hour standard.

petitions in light of the recent Court decisions.

## IV. Administrative Requirements

### *A. Executive Order 12866: Regulatory Impact Analysis*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual 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;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The EPA believes that this action is not a ''significant regulatory action.''

### *B. Impact on Small Entities*

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), provides that whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available an initial Regulatory Flexibility Analysis, unless it certifies that the proposed rule, if promulgated, will not have ''a significant economic impact on a substantial number of small entities.''

This proposal, if promulgated, will not have a significant impact on a substantial number of small entities because it does not create any new requirements.

With respect to the affirmative technical determinations based on the 8-hour standard, this proposal would stay the effectiveness of those determinations, thereby relieving regulatory requirements.

With respect to the deletion of the automatic trigger mechanism for making findings under section 126 for sources for which EPA has made affirmative technical determinations and the replacement of the automatic trigger with findings in the final rule, the regulatory requirements on sources would be unaffected by this proposed action. Because States are no longer subject to schedule for compliance established in the $NO_X$ SIP call, it is extremely likely that under the April 30 NFR, the findings under section 126 for all sources for which EPA has made affirmative technical determinations would be automatically triggered on November 30, 1999. Making a final finding through a separate rulemaking by November 30, 1999, rather than an automatic finding under the existing rule, makes no practical difference whatsoever for the resulting regulatory requirements.

Therefore, because this proposal does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

### *C. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that ''includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more * * * in any one year.'' A ''Federal mandate'' is defined to include a ''Federal intergovernmental mandate'' and a ''Federal private sector mandate'' (2 U.S.C. 658(6)). A ''Federal intergovernmental mandate,'' in turn, is defined to include a regulation that ''would impose an enforceable duty upon State, local, or tribal governments (2 U.S.C. 658(5)(A)(i)), except for, among other things, a duty that is ''a condition of Federal assistance (2 U.S.C. 658(5)(A)(i)(I)). A ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector,'' with certain exceptions (2 U.S.C. 658(7)(A)).

The EPA has determined that this action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action does not propose any new requirements, as discussed above. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, would result from this action.

### *D. Paperwork Reduction Act*

This action does not propose any new information collection requirements. Therefore, an Information Collection Request document is not required.

### *E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

The Executive Order 13045 applies to any rule that EPA determines is (1) ''economically significant'' as defined under Executive Order 12866, and (2) addresses an environmental health or safety risk that has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposal is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant under E.O. 12866 and does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

### *F. Executive Order 12898: Environmental Justice*

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. In the April 30 NFR, the Agency referred to an analysis it conducted in conjunction with the final $NO_X$ SIP call rulemaking. This was a general analysis of the potential changes in ozone and PM levels that may be experienced by minority and low-income populations as a result of the $NO_X$ SIP call. The findings from this analysis are presented in volume 2 of the RIA for the $NO_X$ SIP call. (Office of Air & Radiation Docket, #A–96–56, VI–B–09(vvvv), Regulatory Impact Analysis for the $NO_X$ SIP Call, FIP, and section 126 Petitions. Volume 2, Health and Welfare Benefits. December 1998. EPA–452/R–98–003.)

### *G. Executive Order 12875: Enhancing the Intergovernmental Partnership*

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal

government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's action does not propose a mandate on State, local or tribal governments. The action does not propose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

*H. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's proposal does not significantly or uniquely affect the communities of Indian tribal governments. This action does not propose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rulemaking.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. No. 104–113, directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not propose any new technical standards. Therefore, NTTAA requirements are not applicable to today's proposal.

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

Environmental protection, Air pollution control, Emissions trading, Nitrogen oxides, Ozone transport, Reporting and recordkeeping requirements.

Dated: June 15, 1999.

**Carol M. Browner,**

*Administrator.*

For the reasons set forth in the preamble, part 52 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart A—General Provisions

2. Section 52.34 is amended by revising paragraphs (i) and (k) to read as follows:

**§ 52.34 Action on petitions submitted under section 126 relating to emissions of nitrogen oxides.**

* * * * *

(i) *Action on petitions for section 126(b) findings.*

(1) The Administrator finds that each existing or new major source for which the Administrator has made an affirmative technical determination as described in paragraphs (c) through (h) of this section as to impacts on nonattainment or maintenance of a particular NAAQS for ozone in a particular petitioning State, emits or would emit $NO_X$ in violation of the prohibition of Clean Air Act section 110(a)(2)(D)(i)(I) with respect to nonattainment or maintenance of such standard in such petitioning State.

(2) Notwithstanding any other provision of this paragraph (i), a finding under paragraph (i)(1) of this section as to a particular major source or group of stationary sources in a particular State will be deemed to be withdrawn, and the corresponding part of the relevant petition(s) denied, if the Administrator issues a final action putting in place implementation plan provisions that comply with the requirements of 40 CFR 51.121 and 51.122 for such State.

* * * * *

(k) *Stay of affirmative technical determinations with respect to the 8-hour standard.* Notwithstanding any other provisions of this subpart, the effectiveness of paragraphs (d), (e)(3) and (e)(4), (f), (h)(3) and (h)(4) is stayed.

[FR Doc. 99–15829 Filed 6–23–99; 8:45 am]

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Federal Register

Thursday
June 24, 1999

## Part III

# Office of Personnel Management

**U.S. Naval Research Laboratory (NRL) Personnel Management Demonstration Project; Department of the Navy (DON), Washington, D.C.; Notice**

## OFFICE OF PERSONNEL MANAGEMENT

## U.S. Naval Research Laboratory (NRL) Personnel Management Demonstration Project; Department of the Navy (DON), Washington, DC

(Authority: 5 U.S.C. 4703)

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice of approval of a demonstration project final plan.

**SUMMARY:** Title VI of the Civil Service Reform Act, 5 U.S.C. 4703, authorized the Office of Personnel Management (OPM) to conduct demonstration projects that experiment with new and different personnel management concepts to determine whether such changes in personnel policy or procedures would result in improved Federal personnel management. Section 342 of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103–337, October 5, 1994) permits the Department of Defense (DoD), with the approval of the OPM, to carry out personnel demonstration projects at DoD laboratories designated as Science and Technology (S&T) Demonstration Project Reinvention Laboratories. The NRL was designated as one of these laboratories. This notice establishes the personnel management demonstration project designed by NRL, with the participation of, review by, and approval of the DON, the DoD, and the OPM.

**DATES:** Implementation of this demonstration project will begin no earlier than 90 days after the date of congressional notification.

**FOR FURTHER INFORMATION CONTACT:** NRL: Ms. Betty A. Duffield, Director, Strategic Workforce Planning, Code 1001.2, 4555 Overlook Avenue, SW, Washington, DC 20375–5320, 202–767–3421. OPM: Mr. John André, Office of Merit Systems Oversight and Effectiveness, Demonstration Project Team, U.S. Office of Personnel Management, 1900 E Street, NW, Room 7460, Washington, DC 20415–6000, 202–606–1255.

**SUPPLEMENTARY INFORMATION:**

### 1. Background

Title VI of the Civil Service Reform Act, 5 U.S.C. 4703, authorized OPM to conduct demonstration projects that experiment with new and different personnel management concepts to determine whether such changes in personnel policy or procedures would result in improved Federal personnel management. Section 342 of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103–337, October 5, 1994) permits the DoD, with the approval of the OPM, to carry out personnel demonstration projects at DoD laboratories designated as S&T Demonstration Project Reinvention Laboratories. The NRL was designated as one of these laboratories.

The purpose of the NRL project is to demonstrate a flexible and responsive personnel system that will enhance the Laboratory's ability to attract, retain, and motivate a high-quality workforce. To this end, the project involves:

(1) Streamlined hiring processes,
(2) Broadbanding,
(3) Simplified position classification,
(4) A Contribution-based Compensation System (CCS),
(5) extended probationary period for new employees, and
(6) modified reduction-in-force (RIF) procedures.

### 2. Overview

On February 23, 1999, OPM published the proposed demonstration project in the **Federal Register**, Volume 64, No. 35, Part III, pages 8964 through 9027. During the public comment period ending April 9, 1999, OPM received comments from seventeen individuals, including two who presented oral comments at a public hearing held on March 25, 1999. All comments were carefully considered.

A few of the commenters made statements concerning or suggested changes to areas that lie outside the project's scope or the demonstration project authority of 5 U.S.C. Chapter 47. These comments are not included in the summary below. Most of the commenters raised questions to clarify the philosophical and procedural aspects of the innovations. In many instances, these comments are more suitably addressed in internal guidance and are not included in the summary below. Several acknowledged that the demonstration did have benefits in many areas. The following summary addresses the comments received appropriate for the **Federal Register**, provides responses, and notes resultant changes to the original project plan in the first **Federal Register** Notice. Most commenters addressed several topics which are counted separately. Thus, the total number of comments exceeds the number of individuals cited earlier.

*A. Positive Comments*

Five commenters were generally supportive of the demonstration. They saw its various features as beneficial to employees, managers, and the Laboratory. Specific innovations cited included improvements in personnel practices such as streamlined hiring processes, simplified position classification, paybanding, compensation based on contribution to the organization, pay pool panel review of contribution assessments to better assure fairness and accuracy, and better alignment of responsibility, authority, and accountability.

*B. General Project Comments*

(1) *Comment:* Two commenters addressed the necessity of implementing a demonstration project for NRL considering that the studies cited to evidence the need for change were conducted in the 1980's; that NRL has been able to attract and retain a highly-qualified motivated workforce; and that a ''revenue neutral'' plan could not improve overall performance of an above-average organization and could only provide more money for top contributors by providing less money to others.

*Response:* There have been three recent studies (which confirm the findings in 100+ reports issued over the last 30 years) addressing science and engineering salary shortfall, especially for entry-level and senior personnel and those in high-demand disciplines; excessive recruitment delays resulting in loss of top tiered, highly sought after candidates; and inadequate workforce reshaping tools. These studies are: Naval Research Advisory Committee, ''Report on the Department of the Navy Science and Technology Base,'' 1996; FY–98 Defense Authorization Act, Section 912(c) ''Technology Leaders'' Working Group Reports, February 1999; and A Report from a Panel of the National Academy of Public Administration, ''Naval Research Laboratory: Position Management Analysis,'' March 1999.

Regarding the ''revenue neutral'' aspects of demonstration projects, NRL has always followed a practice of cost containment being an industrially-funded activity. NRL will try to maintain the demonstration as relatively cost neutral to the degree it can be measured given productivity increases, the effect of workforce reshaping, and other such circumstances.

The demonstration project provides that high contributors should be rewarded more than low contributors as it should be. By combining within grade increases (WGI's), quality step increases (QSI's), and career promotion increases into one merit increase fund, this provides the supervisors the flexibility and means to assign all permanent basic pay increases based on the actual level of contributions made to the

organization's mission, not merely longevity or a combination of longevity and performance.

*C. Employee Participation*

(1) *Comment:* Two commenters requested clarifying information regarding bargaining unit employee and union participation in the demonstration process.

*Response:* During the initial design phase, the union representative elected from NRL's bargaining units served on the Staffing Design Team. He attended the staffing design team meetings, participated in discussion of proposed human resource design initiatives, provided recommendations, and voted on the version he felt most beneficial to the Laboratory when several options were on the table. He also served on one of the subcommittees. Also, during development of the proposed design, the decision was made that NRL would not include the guard and trade and craft occupations within the demonstration project. Since NRL's bargaining units are within these occupations, NRL has not negotiated any inclusion. NRL determined that potential inclusion would be better negotiated once actual experience had been gained with proposed initiatives. Unions have been kept informed of the progress of the demonstration efforts as well as any potential impact it may have on bargaining unit employees.

(2) *Comment:* One commenter argues that NRL has failed to meet statutory requirements to consult with employees who will be covered under the demonstration.

*Response:* In addition to including approximately 60 employees on the initial design teams, NRL consulted with NRL employees in the following ways:

—Met with each NRL division head to brief the initial demonstration proposal. This resulted in substantial changes to the proposed RIF process.
—Prepared and distributed an Employee Briefing Handbook for all NRL employees.
—Conducted a series of briefings in 1996 to which all NRL employees were invited (approximately 1,600, over 50 percent attended). During the early stages of project development, published several articles in NRL publications provided to all employees.
—Conducted trials of CCS in 1995 and 1996, each involving 9 to 10 NRL divisions. Significant changes were made to CCS based on the feedback from those involved in these trials, including reduction in the number of critical elements to reduce redundancy and better reflect the balance of different types of NRL work.
—In the last 2 years as the structure of the project has solidified, NRL has continued to communicate regularly with the workforce about the project. Articles have been written in lab-wide publications, a web site established, supervisory training provided, and briefings given to employees in many NRL divisions.

In all of the above instances, employees were encouraged to provide comments and suggestions, and were given phone numbers, e-mail and mail addresses of individuals to whom they could comment. In addition, input from employees and supervisors continues to mold details of the project in terms of how the automation and standard operating procedures will be developed to best assist and support the operation of the project.

*D. Accessions and Internal Placements*

(1) *Comment:* Three individuals stated that the hiring of non-citizens should not be allowed.

*Response:* The goal of the NRL is to locate, hire, and retain the best qualified employees to accomplish the esoteric and highly technical research performed at the Laboratory. In order to attract and hire top notch scientists and engineers and to satisfy merit principles, the NRL advertises most of its science and engineering positions, many times on a nationwide basis, using paid advertisement in major newspapers and scientific journals. In some cases, the advertisement yields only one qualified candidate who is, on occasion, a non-citizen. The Federal government gives strong priority to hiring U.S. citizens and nationals, but allows for hiring of non-citizens in certain circumstances if the requirements of the following are met: immigration law; appropriations act ban on paying certain non-citizens; and executive order restriction on appointing non-citizens in the competitive service. If agencies find no qualified citizens available to fill a competitive service position, and if they meet all of the requirements of the appropriations ban and immigration rules, they may hire a non-citizen under an excepted appointment. It is only under these circumstances that the NRL hires non-citizens. Non-citizens have historically contributed to U.S. military research in very significant ways.

(2) *Comment:* One commenter requested clarification of NRL's maintained pay provision and the reasons for exceptions to this provision, particularly the exception relating to the DoD Priority Placement Program (PPP).

*Response:* Although participation of all covered employees is mandatory, acceptance of the new system is essential for the success of the project. For this reason, the NRL provided a ''grandfather'' clause for NRL employees on retained grade and pay immediately prior to implementation of the project by providing indefinite maintained pay entitlement if their rate of basic pay exceeds the maximum rate for their career level. However, if these same employees are in a RIF situation after the demonstration project is implemented, they will be subject to the demonstration project maintained pay rules while employed by NRL under the demonstration.

The PPP is the Defense Department's job assistance program for employees who are facing separation or demotion as a result of a RIF. Individuals placed through the PPP in lower-graded positions, unless otherwise ineligible, are entitled by law to retain their grade for a 2-year period or are entitled to indefinite pay retention. Notwithstanding the requirements of the NRL proposal as it affects its current employees, longstanding DoD policy has been to protect an employee's grade or pay to the maximum extent permitted by law. The NRL's exception to the maintained pay provision as it affects PPP placements affords this statutory entitlement. The same pay protection will be afforded NRL employees at the time they are affected by a RIF and are placed in non-NRL-demonstration positions.

(3) *Comment:* One commenter requested clarification as to whether employees who are failing to contribute enough to justify their existing pay can contribute enough to justify a promotion.

*Response:* Regarding whether an overcompensated employee may be promoted, overcompensation would typically suggest that an employee should not be promoted from his or her current position because he or she is not contributing at a level that justifies his or her current salary under the demonstration system. However, there may be circumstances under which an overcompensated employee would be an appropriate selectee for a vacancy even into a higher career level. For example, the new position might be in a different career field in which the employee had previously been successful. In addition, employees on maintained pay who are in a career level lower than their target career level, could receive a CCS promotion up to their target career level.

(4) *Comment:* One commenter expressed concern that the plan denies

placement rights to employees in RIF Assessment Category 0 (overcompensated employees who do not receive any portion of a general increase) even though these employees may be satisfactory performers.

*Response:* NRL agrees with the commenter. It is not NRL's intent to penalize satisfactory performers in a RIF situation. The plan does have a mechanism in place to identify unsatisfactory performers. Thus, only those employees who have been identified as unsatisfactory performers will be denied RIF assignment rights.

(5) *Comment:* One commenter suggested that the conversion plan for movement to a position outside the demonstration project should be simplified.

*Response:* NRL is required to use the standardized conversion plan the OPM developed for all activities under a demonstration project.

(6) *Comment:* One commenter requested clarification of why the date of the last equivalent pay increase is based on eligibility for a pay raise rather than for actual receipt of a pay raise.

*Response:* The date of the last equivalent increase is used to determine an employee's date of eligibility for a within-grade increase should they return to a position under the traditional General Schedule (GS) pay system. Unlike the GS pay system, the CCS system does not have a predetermined equivalent increase dollar amount. Under the CCS, an employee could receive a pay increase of $0 up to 20 percent (or more with the Director of Research approval) of their basic pay. Thus, it is reasonable to consider date of eligibility for a pay raise as the date of last equivalent increase.

(7) *Comment:* One commenter questioned whether rating and ranking would occur under the project when rating and ranking is limited to those instances when more than 15 candidates apply.

*Response:* The plan calls for rating and ranking to be done when there are more than 15 qualified applicants and/or qualified preference eligibles. Being able to refer up to 15 qualified applicants without rating and ranking allows the manager a broader pool of applicants from which to select which is one of the key objectives of this initiative, i.e., to give the manager the broadest possible range of qualified candidates from which to choose. Moreover, under the traditional system, it is conceivable to have 15 qualified applicants with the *same score* after the rating and ranking process. When this happens, we are required to use a tie-breaking method to determine the order in which candidates are listed on the referral certificate and the rule of three governs, i.e., selection must be from the top three candidates and a nonpreference applicant may not be selected over a preference eligible applicant. Thus, under the traditional system, it can be argued that equally qualified candidates are not given an equal opportunity to compete for selection.

*E. Compensation*

(1) *Comment:* One commenter suggested that Reductions in Pay owing to ''Serious Medical Problem or Injury'' should be obviated by ''Reasonable Accommodation.''

*Response:* Although NRL attemps to accommodate employees with medical impairments in their position of record, this is not always feasible. There are circumstances in which a change to a lower level position is an appropriate way to resolve a situation of medical inability to perform the original job. Such actions are properly taken under 5 CFR Chapter 752.

(2) *Comment:* Two commenters addressed the use of a single action to consolidate various types of pay actions. One commenter felt this could be done without the need to implement CCS and the other commenter was concerned that the different types of pay actions and deductions would not be visible to employees.

*Response:* The single pay action is not connected to the CCS but to the annual determination of total compensation. The demonstration project consolidates the various compensation decisions currently made at various times during a year into a decision made on an annual basis. (By law, GS WGI's are tied to individual employee service accrual.) As far as visibility of pay actions, each employee will receive a Notice of Personnel Action, SF–50, that will describe the general increase, merit increase, locality pay, award and/or allowance situation. Deductions from salary for health insurance, etc., are reported to employees through the biweekly leave and earnings statement issued by the Defense Finance and Accounting Service.

(3) *Comment:* Three commenters raised questions regarding how NRL would use market references to establish pay under the demonstration project.

*Response:* NRL managers and supervisors will reference market salary data when making personnel and organizational decisions. As part of the CCS process, managers and supervisors will refer to the market salary data to determine if the proposed salary for an individual is comparable to similar work in the marketplace. In addition, top management may be able to use market salary data as a factor in determining the appropriate budget allocation for the merit increase category for each NRL pay pool. The time after degree (or work experience) of the workforce may be able to be factored into the decision process, using the market salary data. As part of the position management process, managers and supervisors will also consult market salary data to assist in determining the appropriate Career Level for a proposed new position. It is NRL's goal to create and maintain a position and organizational structure that is effective, efficient, and competitive with similar organizations in private industry and academia.

(4) *Comment:* Three commenters raised various issues regarding the operation of the Distinguished Contributions Allowance (DCA). Two commenters indicated that the DCA would not be administered in a uniform fashion particularly if an employee leaves; one other questioned the calculation to fund the DCA pool, asking why this quite generous bonus system is only available to such a limited number of employees.

*Response:* Before discussing the Distinguished Contributions Allowance, there is some philosophy that needs to be pointed out. It is intended that supervisors and managers utilize fully the base salary ranges of the career levels and merit increases to move employees through the career levels as their level of work and contributions grow to their target career levels or the top of their assigned level. In addition, contribution, time-off, and special act awards are mechanisms by which highly deserving employees can be rewarded and recognized for work accomplished. The Distinguished Contributions Allowance, on the other hand, is designed to provide compensation for those professional employees who have attained the highest levels of their career fields; and because of high grade billet constraints or pay band salary limitations, NRL cannot adequately compensate them (in light of industry standards) for the superior, higher level of work (above their current career level) they are performing and are expected to perform over the next one to three years (S&E Professional Career Track employees could receive an extension up to two years for a total of five years). The DCA is not a part of basic salary; it is not a bonus or award; and the budget allocation for payment of a DCA is separate and apart from the other four

pay categories under the demonstration project.

An employee receiving a DCA is required to sign a memorandum of understanding because the DCA is a temporary allowance for higher-level work yet to be performed. If the employee leaves NRL, the DCA would be terminated because the terms of the DCA would no longer be met (i.e., an allocation for contributions made here at NRL). If an employee is no longer performing work at the higher career level; or is no longer working on a special project (which was recognized as the reason for allocating a DCA), the DCA would be terminated. One is only eligible to receive this allocation as long as the terms of the DCA are being met. If the employee is not meeting the terms of the DCA, it may be terminated. This action is not grievable or appealable.

Regarding the funding of the DCA, it was decided that in order to provide a meaningful allowance for the high level of work expected, NRL would need the flexibility to set allowances along a continuum up to 25 percent of basic pay. Since the DCA would be reserved for those who had reached the top of their career levels, it was decided to take a snapshot of the current population to determine how many employees were at this level and what their total annual basic salaries were. Using various percentages of the total annual basic salaries and what the charge would be (depending on the percentage) to establish the budget allocation for DCA's, it was determined that a percentage *never greater than 10%* of the total annual basic salaries of eligible employees on a given date would establish the DCA budget allocation. For information purposes, there were 334 employees at the top of their career levels on the date of the calculation who would be eligible for DCA consideration. This is about 11 percent of the NRL workforce.

The DCA budget allocation was established as never greater than 10 percent of the total annual basic salaries of eligible employees. It was felt that this allocation would provide a pool of funds that could be used to better compensate extremely high-level contributors when their contributions are expected to continue for a short period of time and existing methods do not adequately compensate them (in light of industry standards). The approval of DCA's rests with the Director of Research who can incorporate a global perspective to the level of contributions and allowances being granted. In addition, this initiative will be evaluated as part of the normal demonstration project evaluation process.

(5) *Comment:* One commenter asked why all references to pay throughout the plan are given in ''basic pay'' without inclusion of locality-based adjustments.

*Response:* Basic pay is used throughout the plan because it is constant, i.e., it does not vary by locality pay area. It is the rate used government-wide to compute pay actions for employees paid under the General Schedule pay system before locality pay is applied. Basic pay, locality pay, and total salary are recorded separately on the employee's Notification of Personnel Action (SF 50) under the current system. This will not change under the demonstration project. Since the information provided the employee concerning pay under the project will be the same as the information provided under the current system, the wording in the project should not present a problem to employees.

(6) *Comment:* One commenter stated that the rules NRL will establish relating to severance pay for separated employees should be currently available for review as part of the demonstration process public comment period.

*Response:* The commenter is referring to the criteria NRL will need to define in order to make a reasonable job offer that parallels that now offered under Title 5 in a reduction-in-force situation. This level of detail is generally found in the internal operating documents.

(7) *Comment:* One commenter suggested that NRL should explain whether, under the process to convert special salary rate employees to the demonstration project, there are any combinations of factors that could result in an employee being assigned into a lower equivalent grade.

*Response:* The special salary rate conversion process explains that GS employees will be moved into the career track and career level which corresponds to their current GS grade and basic pay. Paragraph VI.A.4 further explains that if the new basic pay rate after conversion to the demonstration project pay schedule exceeds the maximum basic pay authorized for the career level, the employee will be granted maintained pay.

(8) *Comment:* One commenter stated that NRL should clarify whether in VI.A.4. example, step b., the digit ''1'' in the factor ''1.0787'' is an error.

*Response:* 1.0787 is correct. To increase an existing quantity (in this case 1.00 for basic salary) by a percentage (in this case .0787 for DC locality pay), and retain the existing quantity (1.00 for basic salary), it is proper to multiply by one, plus the percentage to be increased times the original amount. To increase basic salary by the additional amount of locality pay (for DC), it is therefore proper to multiply 1.0787 times the salary. This is so that the original amount of pay is kept, with the percentage of locality pay added. (This is equivalent to salary+.0787*salary; 1.0787*basic salary is a simple operation.)

(9) *Comment:* Three questions were received on how the 2.4% merit pay allocation would be distributed among the pay pools.

*Response:* The method(s) to be used to distribute funds among the various pay pools will be defined in the NRL Demonstration Standard Operating Procedures so they may be easily modified throughout the life of the demonstration without having to publish a new **Federal Register**. The actual methodology that will be used for initial implementation of the demonstration is still being determined. During the life of the demonstration the distribution of funds and the method(s) to determine that distribution can be modified as experience dictates. Within the funds available to a pay pool, the pay pool manager can distribute funds among occupational, organizational, or other groups.

*F. Classification*

(1) *Comment:* One commenter requested detailed information on the ''pending position management study.''

*Response:* The National Academy of Public Administration Center for Human Resources Management issued its position management analysis report for NRL in March 1999. The information gained from this report will be considered and addressed in appropriate internal operating guidelines on position management.

(2) *Comment:* One commenter stated that NRL should articulate the rationale and equality of applying different high grade constraints to administrative and technical occupations.

*Response:* In developing the career tracks and levels for the demonstration project, an analysis was made of the career progression of employees under the traditional classification system. It was found that the science and engineering professionals in the research divisions actually have a normal career progression to the non-supervisory ''journeyman'' level of GS–13. Therefore, under the demonstration, GS–13 was included in the target career level, with no interim competition or higher-level approval required. At the GS–14 and 15 levels, however, the DoD issues high-grade controls which limit the number of positions NRL may have

at these levels and the competition for these billets is keen. In addition, these positions are beyond the normal progression for the majority of S&E professionals and many of them are supervisory. Thus, the GS–14 and 15 positions were combined into one career level. The Director of Research maintains approval authority over these positions because of their limited number and because these are the positions from which many of the senior managers for NRL are chosen.

In the Administrative Specialist and Professional Career Track, the career progression for employees is generally to the GS–12 level. This is considered the non-supervisory, ''journeyman'' level for the vast majority of positions covered by this career track. The GS–13 level is normally the supervisory level and forms the applicant pool for filling the senior managerial positions in this career track. While this level is not considered a high-grade level for DoD high-grade controls, it does constitute NRL's pool of applicants for the senior administrative managerial positions and requires Director of Research approval for movement into this level just as for the S&E Professional Career Track level that constitutes the pool of applicants for senior S&E managerial positions. Just as the GS–14 and 15 S&E professional career level is under the DoD high-grade controls, so is the GS–14 and 15 administrative specialist and professional career level; and the Director of Research approval is required for movement into this career level.

(3) *Comment:* One commenter asked if there were no longer controls on movement to the top career level in the Administrative Support Career Track.

*Response:* Every position at NRL will be assigned a target career level which is the top level to which an incumbent can progress without further competition and Position Management Officer approval. These target career levels vary by occupation and sometimes by position within an occupation and serve as a control just as the current full performance level of a position serves as a control.

(4) *Comment:* Two commenters requested clarification on the Advanced Research Scientists and Engineers, Career Level V of the S&E Professional Career Track. Specifically, one asked why this was a DoD Program and both asked how many positions would be allocated to NRL.

*Response:* All but one of the current S&T reinvention demonstration project laboratories requested a Level V or equivalent for their S&T professional career track. Since this level would place employees in two of the DoD components in positions equivalent to executive positions which are tightly controlled, the DoD determined that this new category of executive resources should be limited until it could be tested over a 5-year period. Therefore, DoD allocated a total of 40 positions DoD-wide. It is up to NRL (as well as other affected demonstration projects) to submit requests to DoD for approval of these positions. DoD has not made specific number allocations to each demonstration project. It is our understanding that DoD will be allocating these positions based on merit. Therefore, NRL does not know how many positions will be approved.

*G. CCS Appraisal Process*

A total of fifteen commenters provided over forty comments on the CCS appraisal process. Two commenters praised the process. One believed CCS had the potential to significantly improve productivity and morale at NRL, and the second commenter was looking forward to CCS with optimism. Other comments are related to ten subtopics as follows:

(1) *Comments:* CCS Complexity: Two commenters believed the system to be too complicated. One commenter, who did not believe the system was overly complicated, pointed out that it was based on the current GS grade and step system.

*Response:* Any new appraisal system requires a ''learning curve.'' NRL has worked to reduce this by training supervisors (including a pay pool panel exercise), and by encouraging and supporting trials of CCS within many NRL pay pools over several years. In addition, NRL conducted a series of briefings in 1996 to which all NRL employees were invited (over 50 percent attended), published articles in NRL publications, provided a handbook to all employees, made available a videotape and training materials to those seeking more information, established a demonstration project web site, conducted additional supervisor and employee briefings in 1998 and 1999, and developed a question and answer guide for frequently asked questions. NRL plans to continue its efforts until managers are satisfied with their understanding of the program.

(2) *Comments:* Longevity: Five commenters noted that CCS eliminates salary growth based on longevity. Two were pleased with this approach. Three viewed this as a negative feature of CCS or at least as having a potential negative impact on employees transitioning into the demonstration. Two commenters pointed out that within CCS, a higher contribution was expected from employees at the 10th step of their grade as compared to employees at the first step. One suggested an approach that would convert GS grades to the CCS system in a manner that would minimize the impact on employees transitioning into the demonstration and retain the effect of rewarding longevity.

*Response:* This suggestion was not adopted. It is true that CCS does not reward longevity, but neither is it designed to penalize longevity. It is a contribution to organizational mission assessment system, designed to pay employees for the level of work which they are contributing to the mission. Since a step 10 pay level in any GS grade is approximately 30 percent higher than the same grade's step 1 pay level, it is reasonable to expect a higher level or higher quality contribution from the higher paid employee.

(3) *Comments:* Score and Salary Caps: Four commenters expressed concern about the CCS scoring and the resulting salary implications. Three of the commenters believed that if they are currently being paid at the top of their career level, they must score beyond their level in order not to be considered overcompensated and lose their annual inflation increase. The fourth commenter was concerned that the score cap of 80 created a negative psychological impact for those employees who are paid at the GS–15, step 10 level, since the maximum score places the employee at the top of their normal pay range which creates the appearance of the employee being almost overpaid. This commenter suggested a change to the pay and score line which would allow employees at the GS–15, step 10 level, access to a few scores above 80.

*Response:* Three of the commenters apparently misunderstood the scoring process. Scores within each level encompass the salary spread of the GS-grades banded together for that level. The highest score within each level has a salary equivalent that includes the salary of the top step of the highest GS grade contained in the band. Therefore, an employee earning a salary at the top of his or her band will not be considered overcompensated if he or she earns the top score within the band. All employees who score within their normal pay range will be granted the annual general increase. Even for employees who score below their normal pay range and are determined to be overcompensated, denial of the general increase is not automatic, but is at the discretion of the pay pool manager.

The commenter's suggestion for changing the pay line is not adopted. NRL believes it is necessary to cap the score at 80 to protect the efficacy and integrity of job or pay classification of NRL positions. NRL recognizes the effect on employees at the GS–15, step 10 level, i.e., the score of 80 brings employees paid at this level near the overcompensated range. However, the benefits of protecting the process outweigh any negative psychological impact the capped scoring may create. Further, such negative impact may be overcome through education of the process. The actual monetary impact for employees is no different from the current system where the awards program is used to distinguish performance among the employees at the top of their career level. Also, under CCS, these employees may be eligible (depending upon their performance and contribution level) for a Distinguished Contributions Allowance (DCA).

(4) *Comments:* General Increase Pay: Two commenters believed that placing the general increase pay at risk by including it in the merit pool would help to more fairly compensate NRL employees. Five additional commenters opposed inclusion. One believed that no other demonstration project included the general increase and that any denial of general increase is an adverse action that requires a finding of unsatisfactory performance. Another commenter believed that denial of general increases with its potential for employees to regress into a lower career level could create the problem of appealable actions becoming non-appealable actions.

*Response:* Several demonstration projects that include denial of general increase have already been approved and implemented. Such denials do not constitute an adverse action under 5 CFR Part 432 or Part 752. NRL considers this to be an important and valuable component of its demonstration project; therefore, no change is made to eliminate this provision.

(5) *Comment:* Yearly Accomplishment Report (YAR): One commenter stated that mandatory YAR's may not be necessary for all positions at NRL and suggested several other alternatives which would limit this requirement.

*Response:* NRL agrees with the commenter's point and has made a change that will allow pay pool managers to exempt groups of positions from the requirement to submit a YAR, and to allow employees to submit YAR's at their own option in cases where they are not required.

(6) *Comment:* Contribution Awards: One commenter wanted clarification on when a contribution award would be granted to an employee who was in the normal pay range (and therefore already fully compensated) and when an award would be granted to an overcompensated employee. The same commenter also questioned the reasoning behind allowing overcompensated employees on maintained pay to receive awards and not allowing awards to otherwise overcompensated employees.

*Response:* Contribution awards may be based on many aspects of contributions, including quality, productivity, value to a sponsor, etc., and need not be based solely on the employee's degree of undercompensation. Employees in the normal pay range may do an outstanding job that deserves recognition but not necessarily a higher permanent pay. The project grants pay pool managers and panel members the authority to determine the factors they will consider in granting contribution awards, much the same as the authority exists in the present system.

Overcompensated employees on maintained pay are eligible for contribution awards since they are employees displaced from their original positions unrelated to their own levels of performance or contribution. These employees may be in positions where they do not have access to higher level work equivalent to their maintained pay yet they are outstanding performers in the level of work available to them. Therefore, they should be allowed the opportunity to be recognized for such performance in the new position, even if it is at a lower pay level than the one from which they were displaced.

(7) *Comments:* Fairness: Eight commenters stated several concerns about the equitable application of CCS elements. Some thought the system was too subjective and favoritism would drive the process. Some believed equitable consideration would not be given to research employees working primarily off-site (with non-NRL sponsors or in long-term training). Some expressed concern that more credit would be given to scientific than support personnel. One questioned what would prevent managers from inverting the process, i.e., allowing budgets to dictate appraisals. One commenter was also concerned about the difference in the sizes of the pay pool and two commenters thought that the panel makeup would be a conflict of interest for supervisors competing for the same funds as their subordinates. Three commenters discussed the 360 degree performance evaluation plan; one commented that CCS was contrary to this philosophy as well as other enlightened philosophies. The other two commenters strongly recommended using such a process in connection with CCS.

*Response:* NRL recognizes the subjective nature of CCS appraisals. By and large, NRL employees are not ''widget makers.'' Meaningful assessment demands consideration of quality, value, customer service and other criteria that are subjective by nature. To reduce favoritism and promote fairness, the CCS process provides for review of employee assessments by a group of supervisory officials who are in the same pool. In the pay pool panel process scores assigned by individual supervisors are reviewed by other supervisors in the same pay pool. The supervisors work to apply the CCS level descriptors consistently within their pay pool, and to identify and correct any inappropriately inflated or deflated scores. The pay pool manager is a further review and ultimate approval level.

CCS contains various mechanisms to ensure employees receive proper credit under the generic elements, descriptors, and discriminators. Critical elements may be weighted, supplemental criteria can be used to identify actual work employees are responsible for carrying out, and discriminators may be considered either separately or in a more integrated manner for groups of employees. Flexibility was deemed necessary for individual divisions to tailor the system to their special needs. Supervisors will continue to determine the value of employees' accomplishments when assessing their contributions. Work valued under the current system will likely continue to be valued under CCS. The CCS elements and level descriptors specifically include expectations regarding sponsor/customer service to recognize the importance of this value at NRL. In addition, supervisors and employees will be encouraged to communicate throughout the appraisal period to avoid misunderstandings at the end of the year.

Supervisors have always been free to solicit feedback from sponsors and other customers to consider in employee appraisals. This will continue to be an option under CCS. However, a formal program providing for 360 degree evaluations has not currently been implemented. NRL may consider some type of 360 degree evaluation pilot in the future and will outline any such plan in the standard operating procedures.

Most pay pools will consist of all employees within an NRL division;

standard operating procedures will identify the pay pools more specifically. A few pay pools, as presently planned, will include fewer than the recommended 35 employees. These pools will consist of about 25 employees each. NRL believes that keeping employees in the same supervisory chain together for comparison purposes outweighs the disadvantage of a smaller pool. Panels are made up of supervisors or managers from the division. While NRL recognizes the possible appearance of a conflict of interest, the risk is deemed minimal since pay pool managers have ultimate approval over appraisal and pay decisions. In addition, pay pool panel members and managers must be able to explain any unusual findings to a third party evaluator who will be monitoring compensation trends.

(8) *Comments:* Team work: Three commenters raised concerns that CCS might serve as a disincentive for scientific collaboration and team work as employees compete for available funds.

*Response:* The CCS is a ''contribution to organizational mission'' assessment program which is what team building and Total Quality Leadership espouse. Scientific collaboration, cooperation and team work should be encouraged among all employees. This is why each career track under CCS has a critical element that addresses these values specifically.

(9) *Comments:* Equitable Pay Distribution: Two commenters were concerned that no firm rules existed for increasing employees' pay or denying general increase. One of the commenters wanted clarification on when NRL would *not* award a pay increase to move an undercompensated employee up into the normal pay range, and when it would *not* deny a pay increase to move an overcompensated employee down towards the NPR.

*Response:* One of the primary objectives of the project is to ''provide NRL management with increased authority to manage human resources * * *.'' While the results of the CCS process provide the framework for pay adjustment decisions, NRL believes it is important that management judgment also be applied in making final decisions. To most effectively accomplish the mission of their organizations, NRL managers need flexibility in managing their most valuable resource, their employees. There are many possible situations in which a pay pool manager might not effect a pay adjustment that moves an over- or undercompensated employee into the normal pay range. One example might be the case of an undercompensated employee who achieved a significant increase in score over the previous year. The pay pool manager may determine that this employee is unlikely to be in a position to repeat this level of contribution the next year (perhaps because of a special project that is ending); therefore, a permanent pay increase that moved the employee all the way into the normal pay range would be inappropriate.

(10) *Comments:* Employee Rights: One commenter asserted that CCS provisions violate merit principles. The same commenter questioned the applicability of performance-based action procedures, requested clarification on what type of actions will no longer have appeal rights, and offered an alternative approach to limiting appeal rights, i.e., allow NRL to recover attorney fees from employees if they lose their appeal and meet certain other conditions. A second commenter believed that NRL's project provides for reducing employees' pay through adverse action by 6 percent and denying appeal rights on such actions. This same commenter suggested merit principles were not being followed and questioned why all avenues of appeal are being removed. A third commenter believes there must be an official grievance procedure for CCS, and suggests that grievances (and decisions to deny the general increase) be reviewed by a committee consisting of employee peers, the head of a different division, and someone from OPM or EEO.

*Response:* Merit principles provide that ''Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector . . ., and appropriate incentives and recognition should be provided for excellence in performance.'' This is precisely what NRL seeks to do with the merit increase provisions of CCS. Since CCS does not provide for automatic within-grade increases, appeal rights do not exist for denial of any set increase. ''Regression'' into a lower career level resulting from an employee's pay being frozen is not appealable to the Merit Systems Protection Board (MSPB). Any actual reduction in pay will be taken through adverse or performance-based action procedures and will continue to be appealable to the MSPB. There is precedent for limiting appeal rights when no reduction in pay occurs. Several S&T reinvention laboratory demonstration projects, as well as China Lake, one of the earliest projects tested, have similar pay for performance or contribution to organizational mission methods and do not allow outside appeal rights for regression into a lower pay level. An NRL employee retains his or her grievance rights concerning CCS scores which serve as the basis of pay determinations. Concerning the applicability of performance regulations, CCS critical elements, descriptors, and discriminators do meet the definition of 5 CFR 430 and appropriate steps will be taken before taking any performance-based action under 5 CFR 432. The suggestion to recover attorney fees from employees is not deemed feasible and will not be adopted.

The suggestion regarding the content of a committee to review CCS grievances and general increase denials is not adopted. NRL believes that these tasks properly belong to managers in the employee's chain (particularly the pay pool manager), who are responsible for the effective management of their human resources. The demonstration does include a procedure for complaints regarding CCS appraisals, which requires the pay pool panel and pay pool manager to consider the grievance first. If the employee is not satisfied with the result, he or she may escalate the grievance to the next level supervisor.

**3. Demonstration Project Notice Changes**

The following is a summary of substantive changes and clarifications which have been made to the project proposal.

A. II. Introduction, E. Participating Organizations and Employees. Wording changed to clarify participation of union representative.

B. III. Accessions and Internal Placement, E. Expanded Detail Authority. Clarified approval authority on details beyond one year and limit on details to higher-level positions.

C. III. Accessions and Internal Placements, G. Definitions, 6. Pay Adjustment. Added a statement that termination of maintained pay is also a pay adjustment.

D. III. Accessions and Internal Placements, G. Definitions, 9. Approving Manager. Clarified definition of approving manager and personnel actions.

E. III. Accessions and Internal Placements, H. Pay Setting Determinations Outside the CCS, 2. Internal Actions. Added a statement to clarify that these actions cover employees within the NRL demonstration.

F. III. Accessions and Internal Placements, J. Expanded Temporary Promotions. Clarified limit on

temporary promotions within a 24-month period.

G. IV. Sustainment, B. Integrated Pay Schedule (IPS). Clarified adjusted basic pay cap.

H. IV. Sustainment, C. Contribution-based Compensation System (CCS), 2. CCS Process and 4. Annual CCS Appraisal Process. Modified to clarify that the appropriate discriminators to the position need to be considered in the assessment process.

I. IV. Sustainment, B. IPS, 5. Distinguished Contributions Allowance (DCA). Clarified conditions for which a DCA may be appropriate and clarified eligibility.

J. IV. Sustainment, C. Contribution-based Compensation System (CCS), 4. Annual CCS Appraisal. Modified to allow exceptions to the mandatory yearly accomplishment report requirement.

K. IV. Sustainment, C. Contribution-based Compensation System (CCS), 7. Compensation, c. Locality Increases. Clarified adjusted basic pay cap.

L. V. Separations, B. RIF, 2. RIF Definitions, c. Service Computation Date, (1) CCS Process Results Credit, Figure 11. Clarified eligibility for RIF assessment categories 2. and 3.

M. V. Separations, B. RIF, 3. Displacement Rights, (d) Ineligible for Displacement Rights. Changed to allow displacement rights to individuals in Assessment Category 0.

N. VI. Demonstration Project Transition, A. Initial Conversion or Movement to the Demonstration Project, 3. WGI Buy-in. Clarified eligibility for the WGI buy-in.

O. VI. Demonstration Project Transition, C. Training. Modified to clarify degree of training that will be available to various Laboratory groups.

P. IX. Demonstration Project Costs, A. Transition. Clarified eligibility for the WGI buy-in.

Q. X. Automation Support, D. RIF Support System (RIFSS). Removed reference to an Appendix J.

R. Appendix E, Computation of the IPS and the NPR. Illustrative normal pay range rails redrawn on charts to more accurately reflect scores and salaries.

Dated: June 17, 1999.

Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

**Table of Contents**

## I. Executive Summary

Over the last 30 years, many studies of the DoD laboratories have been conducted on laboratory quality and personnel. Virtually all of these studies have recommended improvements in personnel policies, organization, and management. In order to respond to the findings of these studies, this proposed personnel demonstration project encompasses streamlined hiring processes, simplified position classification, the CCS, and modified RIF procedures.

The demonstration project described herein was designed by the NRL, with the participation of and review by the DoN, the DoD, and the OPM. The purpose of the demonstration project is to develop and implement a personnel management system that will enable NRL to obtain, maintain, and retain the highest quality workforce possible to accomplish its mission in support of national defense. There are four primary objectives of the demonstration project:

(1) Provide NRL increased authority to manage human resources,

(2) Enable NRL to hire and retain the best qualified employees,

(3) Enable NRL to compensate its employees equitably at a rate that is more competitive with the labor market, and

(4) Provide a direct link between levels of individual contribution and the compensation received.

Initially, the demonstration project will cover all NRL employees except Senior Executive Service (SES) members, scientific and professional (ST) employees (above GS-15), guards, and trade and craft employees. The guards and trade and craft employees may be included at a later time, after more experience is gained in the operation of the CCS. The project will be reviewed and evaluated throughout its duration by OPM, DoD, DoN, and NRL. In addition to evaluation topics, such as goal attainment and employee and management acceptance, the project will be assessed for cost containment. After 5 years, the project will be evaluated to determine if it is to be made permanent, modified, or terminated. Areas not specifically addressed will use provisions that currently exist in 5 United States Code (U.S.C.) and 5 Code of Federal Regulations (CFR).

## II. Introduction

### *A. Purpose*

The goal of this personnel demonstration project is to develop and implement a human resources management system that will enable NRL to obtain, maintain, and retain, into the 21st century, the highest quality workforce possible to accomplish its mission in support of national defense. NRL's mission is to conduct a broadly-based multidisciplinary program of scientific research and advanced technological development directed toward new and improved materials, equipment, techniques, systems, and related operational procedures for the DoN. The human resources management system must enable NRL to attract and retain the best scientists, engineers, and support personnel available in the labor market.

The demonstration project has the following four primary objectives:

a. Provide NRL management with increased authority to manage human resources consistent with its operation under the Navy Working Capital Fund (NWCF) as an industrially-funded activity;

b. Provide a recruitment process, within the context of merit principles, that will enable NRL to hire the best qualified employees at a reasonable cost and for competitive compensation;

c. Provide a compensation system that will enable NRL to compensate its employees equitably at a rate that is commensurate with their levels of responsibility and contribution, and is competitive with those found in the labor market; and

d. Provide a direct link between levels of individual contribution and the compensation received.

### *B. Problems With the Current System*

The demonstration project addresses a set of issues regarding human resources in the Federal laboratory system. These problems have been extensively documented in a long series of reports by blue-ribbon panels. These include the following: the Packard Report,* the Grace Commission Report,** the Fowler Report,*** and other high-level analyses of the state of Federal research capabilities. In all of these reports, there is a common theme * * * that Federal laboratories need more efficient, cost effective, and timely processes and methods to acquire and retain a highly creative, productive, educated, and trained workforce.

The NRL must be able to compete with the private sector for the best talent and be able to make job offers in a timely manner with the attendant compensation that attracts high-quality employees. Once hired, NRL must have the means to motivate and reward employees for their innovative contributions to ensure that the creative process is continually renewed. Compensation levels must be directly linked to the levels of individual contributions. High contributors must be rewarded both to encourage their continued contributions and to ensure their retention at NRL. Similarly, lower contributing individuals should receive less compensation, or, in some cases, be encouraged to seek other employment.

### *C. Waivers Required*

NRL proposes changes in the following broad areas to address its problems in human resources management: accessions and internal placements, sustainment, and separations. Appendix A lists the laws,

* White House Science Council, ''Report of the White House Science Council, Federal Laboratory Review Panel,'' (Packard Report), May 1983.

** Task Force on Research and Development (R&D), ''President's Private Sector Survey on Cost Control, Task Force Report on R&D,'' (Grace Commission Report), 8 December 1983.

*** Defense Science Board, ''Report of the Defense Science Board 1987 Summer Study on Technology Base Management,'' (Fowler Report), December 1987.

rules and regulations requiring waivers to enable NRL to implement the proposed system.

*D. Expected Benefits*

The demonstration project is expected to result in:

(1) Maintaining the quality of the NRL workforce in the scientific and engineering disciplines as well as administrative specialist and professional and support professions;

(2) More timely processing of personnel actions;

(3) Increased retention of high-level contributors and wider distribution of salaries; and

(4) increased satisfaction with human resources management processes by employees and managers.

*E. Participating Organizations and Employees*

Initially, the demonstration project would cover all NRL employees except SES members, ST employees, guards, and trade and craft employees. The guards and trade and craft employees may be included at a later time, after more experience is gained in the operation of the CCS. Figure 1 identifies the employees by group for major geographic locations. NRL sites with less than 10 employees each are identified as ''Other'' in Figure 1.

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**NRL Demonstration Project Employees by Group and Geographic Site**

(as of 30 September 1998)

| | EMPLOYEES | | | | |
|---|---|---|---|---|---|
| | S&E Prof | S&E Tech | Admin Spec and Prof | Admin Suppt | Total |
| Washington, DC | 1531 | 160 | 378 | 470 | 2543 |
| Chesapeake Beach, MD | 1 | 6 | 2 | 2 | 11 |
| Stennis Space Ctr., MS | 148 | 22 | 34 | 62 | 266 |
| Monterey, CA | 52 | 0 | 3 | 7 | 62 |
| Mobile, AL | 3 | 4 | 0 | 2 | 9 |
| Arlington, VA | 5 | 0 | 13 | 4 | 23 |
| Other | 27 | 9 | 12 | 4 | 52 |
| All Sites | 1767 | 201 | 442 | 551 | 2966 |

**Figure 1. NRL Demonstration Project Employees by Group and Geographic Site**

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A union representative elected from the following bargaining units served on the Staffing Design Team and participated in the development of the accession and internal placement interventions proposed in this plan:

Federal Firefighters Association—Firefighters, Chesapeake Beach, MD (as of 6/23/98 this function was transferred to another activity)

Washington Area Metal Trades Council—Trades and Crafts Employees, Washington, DC

International Association of Machinists and Aerospace Workers—Guards, Washington, DC

*F. Project Design*

In response to the authority granted by Congress to develop a demonstration project, NRL's Director of Research (DOR) set up five design teams to develop the project plan. Each team was led by a senior NRL manager from outside the Human Resources Office (HRO), and was responsible for developing project proposals in one of the five primary functional areas of the project. Each team was comprised of two human resources advisors, an Equal Employment Opportunity (EEO) advisor, several midlevel supervisors or managers, an NRL Administrative Council representative, and several employee representatives (including bargaining unit representatives when appropriate).

**III. Accessions and Internal Placements**

*A. Hiring Authority*

1. Background

Private industry and academia are the principal recruiting sources for scientists and engineers at NRL. It is extremely difficult to make timely offers of employment to hard-to-find scientists and engineers. Even when a candidate is identified, he or she often finds another job opportunity before the lengthy recruitment process can be completed.

2. Delegated Examining

a. Competitive service positions within the NRL Demonstration Project will be filled through Merit Staffing or under Delegated Examining.

b. The ''Rule of Three'' will be eliminated. When there are no more than 15 qualified applicants and no preference eligibles, all eligible applicants are immediately referred to the selecting official without rating and ranking. Rating and ranking will be required only when the number of qualified candidates exceeds 15 or there is a mix of preference and nonpreference applicants. Statutes and regulations covering veterans' preference will be observed in the selection process and when rating and ranking are required. If the candidates are rated and ranked, a random number selection method using the application control number will be used to determine which applicants will be referred when scores are tied after the rating process. Veterans will be referred ahead of non-veterans with the same score.

*B. Legal Authority*

For actions taken under the auspices of the NRL Demonstration Project, the legal authority, Public Law 103–337, will be used. For all other actions, NRL will continue to use the nature of action codes and legal authority codes prescribed by OPM, DoD, or DoN.

*C. Determining Employee and Applicant Qualifications*

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**MINIMUM QUALIFICATIONS REQUIREMENTS**

| Level | Min. Qualifications Requirement Equiv. |
|---|---|
| **S&E Professional** | |
| I | GS-1 |
| II | GS-5 |
| III | GS-11 |
| IV | GS-14 |
| V | Appropriate Exp. |
| **S&E Technical** | |
| I | GS-1 |
| II | GS-5 |
| III | GS-9 |
| IV | GS-11 |
| **Administrative Specialist and Professional** | |
| I | GS-1 |
| II | GS-5 |
| III | GS-11 |
| IV | GS-13 |
| V | GS-14 |
| **Administrative Support** | |
| I | GS-1 |
| II | GS-5 |
| III | GS-8 |

**Figure 2. Minimum Qualifications Requirements**

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Special DoN or DoD requirements not covered by the OPM Qualification Standards Operating Manual for GS Positions, such as Defense Acquisition Workforce Improvement Act (DAWIA) qualification requirements for acquisition positions and physical performance requirements for sea duty, work on board aircraft, etc., must be met.

*D. Noncitizen Hiring*

Where Executive Orders or other regulations limit hiring noncitizens, NRL will have the authority to approve the hiring of noncitizens into competitive service positions when qualified U.S. citizens are not available. Under the demonstration project, as with the current system, a noncitizen may be appointed only if it has been determined there are no qualified U.S. citizens. In order to make this determination, the position will be advertised extensively throughout the nation using paid advertisements in major newspapers or scientific journals, etc., as well as the ''normal'' recruiting methods. If a noncitizen is the only qualified candidate for the position, the candidate may be appointed. The selection is subject to approval by the NRL approving manager. The demonstration project constitutes a delegated examining agreement from OPM for the purposes of 5 CFR 213.3102(bb).

*E. Expanded Detail Authority*

Under the demonstration project, NRL's approving manager would have the authority:

(1) To effect details up to 1 year to demonstration project positions without the current 120-day renewal requirement; and

(2) To effect details to a higher level position in the demonstration project up to 1 year within a 24-month period without competition.

Details beyond one-year require the approval of the Commanding Officer (CO), NRL and are not subject to the 120-day renewal requirement.

*F. Extended Probationary Period*

All current laws and regulations for the current probationary period are retained except that nonstatus candidates hired under the demonstration project in occupations where the nature of the work requires the manager to have more than one year to assess the employee's job performance will serve a 3-year probationary period. Employees with veterans' preference will maintain their rights under current law and regulation.

*G. Definitions*

1. Basic Pay

The total amount of pay received at the rate fixed through CCS adjustment for the position held by an employee including any merit increase but before any deductions and exclusive of additional pay of any other kind.

2. Maintained Pay

An employee may be entitled to maintain his or her rate of basic pay if

that rate exceeds the maximum rate of basic pay for his or her career level as a result of certain personnel actions (as described in this plan). An employee's initial maintained pay rate is equal to the lesser of (1) the basic pay held by the employee at the time an action is taken which entitles the employee to maintain his or her pay or (2) 150 percent of the maximum rate of basic pay of the career level to which assigned. The employee is entitled to maintained pay for 2 years or until the employee's basic pay is equal to or more than the employee's maintained pay, whichever occurs first. Exceptions to the 2-year limit include employees on grade and pay retention ''grandfathered'' in upon initial conversion into the demonstration project, former special rate employees receiving maintained pay as a result of conversion into the project, and employees placed through the priority placement programs. Employees will receive half of the across-the-board GS percentage increase in basic pay and the full locality pay increase while on maintained pay. Upon termination of maintained pay, the employee's basic pay will be adjusted according to the CCS appraisal process. If the employee's basic pay exceeds the maximum basic pay of his or her career level upon expiration of the 2-year period, the employee's pay will not be reduced; the employee will be in the overcompensated range of basic pay category for CCS pay increase purposes, see Figure 10.

Maintained pay shall cease to apply to an employee who:

(1) has a break in service of 1 workday or more; or

(2) is demoted for personal cause or at the employee's request.

The employee's maintained rate of pay is basic pay for purposes of locality pay (locality pay is basic pay for purposes of retirement, life insurance, premium pay, severance pay, advances in pay, workers' compensation, and lump-sum payments for annual leave but not for computing promotion increases). Employees promoted while on maintained pay may have their basic pay (excluding locality pay) set up to 20 percent greater than the maximum basic pay for their current career level or retain their ''maintained pay,'' whichever is greater.

3. Promotion

The movement of an employee to a higher career level within the same career track or to a different career track and career level in which the new career level has a higher maximum basic salary rate than the career level from which the employee is leaving.

4. Reassignment

The movement of an employee from one position to another position within the same career level in the same career track or to a position in another career track and career level in which the new career level has the same maximum basic salary rate as the career level from which the employee is leaving.

5. Change to Lower Career Level

The movement of an employee to a lower career level within the same career track or to a different career track and career level in which the new career level has a lower maximum basic salary range than the career level from which the employee is leaving.

6. Pay Adjustment

Any increase or decrease in an employee's rate of basic pay where there is no change in the employee's position. Termination of maintained pay is also a pay adjustment.

7. Detail

The temporary assignment of an employee to a different demonstration project position for a specified period when the employee is expected to return to his or her regular duties at the end of the assignment. (An employee who is on detail is considered for pay and strength purposes to be permanently occupying his or her regular position.)

8. Highest Previous Rate

NRL will establish maximum payable rate rules that parallel the rules in 5 CFR 531.202 and 531.203 (c) and (d).

9. Approving Manager

Managers at the directorate, division head, division superintendent, or directorate-level staff offices who have budget allocation/execution; position management; position classification; recruitment; and staffing authorities for their organization.

*H. Pay Setting Determinations Outside the CCS*

1. External New Hires

a. This includes reinstatements. Initial basic pay for new appointees into the demonstration project may be set at any point within the basic pay range for the career track, occupation, and career level to which appointed that is consistent with the special qualifications of the individual and the unique requirements of the position. These special qualifications may be consideration of education, training, experience, scarcity of qualified applicants, labor market considerations, programmatic urgency, or any combination thereof which is pertinent to the position to which appointed. Highest previous rate may be used to set the pay of new appointees into the demonstration project. (The approving manager authorizes the basic pay.)

b. Transfers from within DoD and other Federal agencies will have their pay set using pay setting policy for internal actions based on the type of pay action.

c. A recruitment or relocation bonus may be paid using the same provisions available for GS employees under 5 U.S.C. 5753. Employees placed through the DoD Priority Placement Program (PPP), the DoN Reemployment Priority List (RPL), or the Federal Interagency Career Transition Assistance Plan are entitled to the last earned rate if they have been separated.

2. Internal Actions

These actions cover employees within the demonstration project, including demonstration project employees who apply and are selected for a position within the project.

a. Promotion. When an employee is promoted, the basic pay after promotion may be up to 20 percent greater than the employee's current basic pay. However, if the minimum rate of the new career level is more than 20 percent greater than the employee's current basic pay, then the minimum rate of the new career level is the new basic pay. The employee's basic pay may not exceed the basic pay range of the new career level. Highest previous rate may be applied, if appropriate. (The approving manager authorizes the basic pay.) Note: Most target career level promotions will be accomplished through the CCS appraisal and pay adjustment process (see section IV.C.8).

b. Pay Adjustment (Voluntary Change to Lower Pay) or Change to Lower Career Level (except RIF). When an employee accepts a voluntary change to lower pay or lower career level, basic pay may be set at any point within the career level to which appointed, except that the new basic pay will not exceed the employee's current basic pay or the maximum basic pay of the career level to which assigned, whichever is lower. Highest previous rate may be applied, if appropriate. (The approving manager authorizes the basic pay.)

(1) Examples of Voluntary Change to a Lower Career Level. An employee in an Administrative Specialist and Professional Career Track, Career Level III, position may decide he or she would prefer a Career Level II position in the Administrative Support Career Track because it offers a different work

schedule or duty station. An employee in Level IV of the Administrative Specialist and Professional Career Track who has a family member with a serious medical problem and wants to be relieved of supervisory responsibilities may request a change to Career Level III.

(2) Example of Pay Adjustment (Voluntary Change to Lower Pay) or Change to a Lower Career Level. An employee may accept a change to lower pay or to a lower career level through a settlement agreement. A Research Physicist who is in Level III and is being paid near the top of Level III, is rated unacceptable in the critical element Research and Development (R&D) Business Management. In settlement of a proposal to remove this employee for unacceptable performance, an agreement is reached which reduces the employee's pay to a rate near the beginning of Level III.

c. Pay Adjustment (Involuntary Change to Lower Pay) or Change to Lower Career Level Due to Adverse or Performance-based Action. When an employee is changed to a lower career level, or receives a change to lower pay due to an adverse or performance-based action, the employee's basic pay will be reduced by at least 6 percent, but will be set at a rate within the rate range for the career level to which assigned. (The approving manager authorizes the basic pay.) Such employees will be afforded appeal rights as provided by 5 U.S.C. 4303 or 7512.

d. Involuntary Change to Lower Career Level or Reassignment to a Career Track with a Lower Salary Range, Other than Adverse or Performance-based. If the change is not a result of an adverse or performance-based action, the basic pay will be preserved to the extent possible within the basic pay range of the new career level. If the pay cannot be set within the rate range of the new career level, it will be set at the maximum rate of the new career level and the employee's pay will be reduced. If the change is a result of a position reclassification resulting in the employee being assigned to a lower career level or reassigned to a different career track with a lower maximum basic salary range, the employee is entitled to maintained pay if the employee's current salary exceeds the maximum rate for the new band.

e. RIF Action (including employees who are offered and accept a vacancy at a lower career level or in a different career track). The employee is entitled to maintained pay, if the employee's current salary exceeds the maximum rate for the new band.

f. Upward Mobility or Other Formal Training Program Selection. The employee is entitled to maintained pay, if the employee's current salary exceeds the maximum rate for the new band.

g. Return to Limited or Light Duty from a Disability as a Result of Occupational Injury to a Position in a Lower Career Level or to a Career Track with Lower Basic Pay Potential than Held Prior to the Injury. The employee is entitled indefinitely to the basic pay held prior to the injury and will receive full general and locality pay increases. If upon reemployment, an employee was not given the higher basic pay (basic pay received at the time of the injury), any retirement annuity or severance pay computation would be based on his or her lower basic pay (salary based on placement in a lower career level). Even though the Department of Labor (DOL) would make up the difference between the lower basic pay and the higher basic pay earned at the time of injury, the DOL portion is not considered in the retirement or severance pay computation.

h. Reassignment. The basic pay normally remains the same. Highest previous rate may be applied, if appropriate. (The approving manager authorizes the basic pay.)

i. Student Educational Employment Program. Initial basic pay for new appointees may be set at any point within the basic pay range for the career track, occupation, and career level to which appointed. Basic pay may be increased upon return to duty (RTD) or conversion to temporary appointment, in consideration of the student's additional education and experience at the time of the action. Students who work under a parallel work study program may have their basic pay increased in consideration of additional education and/or experience. Basic pay for students may be increased based on their CCS appraisal. (The approving manager authorizes the basic pay.)

j. Hazard Pay or Pay for Duty Involving Physical Hardship. Employees under the demonstration project will be paid hazardous duty pay under the provisions of 5 CFR part 550, subpart I.

*I. Priority Placement Program (PPP)*

Current PPP procedures apply to new hires and internal actions.

*J. Expanded Temporary Promotions*

Current regulations require that temporary promotions for more than 120 days to a higher level position than previously held must be made competitively. Under the demonstration project, NRL would be able to effect temporary promotions of not more than 1 year within a 24-month period without competition to positions within the demonstration project.

**IV. Sustainment**

*A. Position Classification*

The position classification changes are intended to streamline and simplify the process of identifying and categorizing the work done at NRL. NRL will establish an Integrated Pay Schedule (IPS) for all demonstration project positions in covered occupations. The IPS will replace the current GS and extend the pay schedule to the equivalent of the ES–4 level of the ''Rates of Basic Pay for the Members of the Senior Executive Service (SES).''

1. Career Tracks and Career Levels

Within the IPS, occupations with similar characteristics will be grouped together into four career tracks. Each career track consists of a number of career levels, representing the phases of career progression that are typical for the respective career track. The career levels within each career track are shown in Figure 3, along with their GS equivalents. The equivalents are based on the levels of responsibility as defined in 5 U.S.C. 5104, and not on current basic pay schedules. Appendix B provides definitions for each of the career tracks and the career levels within them.

The career tracks and career levels were developed based upon administrative, organizational, and position management considerations at NRL. They are designed to enhance pay equity and enable a more seamless career progression to the target career level for an individual position or category of positions. This combination of career tracks and career levels allows for competitive recruitment of quality candidates at differing rates of compensation within the appropriate career track, occupation, and career level. It will also facilitate movement and placement based upon contribution, in conjunction with the CCS described in paragraph IV.C. Other benefits of this arrangement include a dual career track for S&E employees and greater competitiveness with academia and private industry for recruitment. Appendix C identifies the occupational series currently within each of the four career tracks.

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# CAREER TRACKS AND CAREER LEVELS WITH EQUIVALENTS

**S&E Professional (NP)**

| | | | | | |
|---|---|---|---|---|---|
| Career Level | I | II | III[b] | IV[b] | V |
| GS Equiv. | 1-4 | 5-10 | 11-13 | 14-15 | ARSAE |

**S&E Technical (NR)**

| | | | | | |
|---|---|---|---|---|---|
| Career Level | I | II | III | IV | V[a] |
| GS Equiv. | 1-4 | 5-8 | 9-10 | 11-12 | 13 |

**Administrative Specialist and Professional (NO)**

| | | | | | |
|---|---|---|---|---|---|
| Career Level | I | II | III[b] | IV[b] | V[b] |
| GS Equiv. | 1-4 | 5-10 | 11-12 | 13 | 14-15 |

**Administrative Support (NC)**

| | | | |
|---|---|---|---|
| Career Level | I | II | III |
| GS Equiv. | 1-4 | 5-7 | 8-10 |

**a** Temporary career level to accommodate current incumbents. No additional incumbents will be moved into this level; when no incumbents remain in this career level, it will be abolished.

**b** Promotion beyond these levels will not occur without proper DOR approval and high grade authorization if needed.

**Figure 3. Career Tracks and Career Levels with Equivalents**

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a. Target Career Level. Each position will have a designated target career level under the demonstration project. This target career level will be identified as the career level to which an incumbent may be advanced without further competition within a career track. These target career levels will be based upon present full performance levels. Target career levels may vary based upon occupation or career track. Employees' basic pay will be capped at the target career level until other appropriate conditions (competition, availability of a high-grade billet, position management approval, increase in or acquisition of higher level duties, approval of an accretion of duties promotion, etc.) have been met, and the employee has been promoted into the next higher level.

b. Occupational Series and Position Titling. Presently, NRL positions are identified by occupational groups and series of classes in accordance with OPM position classification standards. Under the demonstration project, NRL will continue to use occupational series designators consistent with those currently authorized by OPM to identify positions. This will facilitate related personnel management requirements, such as movement into and out of the demonstration project. Other occupational series may be added or deleted as needed to support the demonstration project. Interdisciplinary positions will be accommodated within the system based upon the qualifications of the individual hired.

Titling practices consistent with those established by OPM classification standards will be used to determine the official title. Such practice will facilitate other personnel management requirements, such as the following: movement into and out of the demonstration project, reduction in force, external reporting requirements, and recruitment. CCS career level descriptors and Requirements Document (RD) (see paragraph IV.A.2) information will be used for specific career track, career level, and titling determinations.

c. Classification Standards. Under the proposed demonstration project, the number of classification standards would be reduced from over 70 to 4 (see Figure 2.) Each standard would align with one of the four career tracks and would cover all positions within that career track. Each career track has two or three elements that are considered in both classifying a position and in judging an individual's contributions for pay setting purposes. Each element has generic descriptors for every career level. These descriptors explain the type of work, degree of responsibility and scope of contributions that need to be ultimately accomplished to reach the highest basic pay potential within each career level. (See Appendix D.) To classify a position, a manager would select the career level which is most indicative overall of the type of duties to be performed and the contributions needed. For example: A supervisor needs a secretarial position for a branch. In reading the elements and descriptors for the Administrative Support Career Track, the supervisor determines that the Level II descriptors illustrate the type of work and contributions needed. Therefore, the position would be classified as a Secretary, Level II.

d. Fair Labor Standards Act (FLSA). Demonstration project positions will be covered under the FLSA and 5 CFR part 551. Determination of their status (exempt or nonexempt) will be made based on the criteria contained in 5 CFR Part 551. The status of each new position under the demonstration project will be determined using computer assisted analysis as part of an automated process for preparing the RD. Those positions for which the computer is unable to make the final FLSA determination will be ''flagged'' for referral to a human resources specialist for determination.

(1) Guidelines for FLSA Determinations.

a. Supervisory Information: provided through an automated system in a checklist format; results of this checklist have an impact on FLSA determination.

b. FLSA Information: provided through an automated system in a checklist format; results of this checklist in conjunction with the supervisory information provide a basis for the FLSA determination.

c. If required, the section entitled ''Purpose of Position'' will be used to assist in FLSA determination.

d. RD's requiring additional review before being finalized will be forwarded to a human resources specialist to review the FLSA determination.

(2) Nonsupervisory and Leader Positions. Figure 4 shows the exempt or nonexempt status applicable to nonsupervisory and leader positions in the indicated career track and career level. In those cases where ''Review'' is indicated, the FLSA status must be determined based on the specific duties and responsibilities of the subject position.

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**FLSA Status of Nonsupervisory and Leader Positions[a]**

| | Career Level I | Career Level II | Career Level III | Career Level IV | Career Level V |
|---|---|---|---|---|---|
| S&E and Other Prof | FLSA-covered | Review | Exempt | Exempt | Exempt |
| S&E Tech | FLSA-covered | FLSA-covered | Review | Exempt | Exempt |
| Admin Spec and Prof | FLSA-covered | Review | Exempt | Exempt | Exempt |
| Admin Sppt | FLSA-covered | FLSA-covered | Review | | |

[a] FLSA exemption and nonexemption determinations will be made consistent with criteria found in 5 CFR part 551. All employees are covered by the FLSA unless they meet the executive, administrative, or professional criteria for exemption. As a general rule, the FLSA status can generally be matched to the occupational families and pay bands found in Table 3. Exceptions to these guidelines include supervisors/managers who meet the definitions outlined in the OPM GS Supervisory Guide. The generic position descriptions will not be the sole basis for the FLSA determination. Each position will be evaluated on a case-by-case basis by comparing the duties and responsibilities assigned and the classification standards for each pay band, under 5 CFR part 551 criteria.

**Figure 4. FLSA Status of Nonsupervisory and Leader Positions**

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(3) Supervisory Positions. FLSA determination for supervisory positions must be made based on the duties and responsibilities of the particular position involved. As a rule, if a position requires supervision of employees who are exempt under FLSA, the supervisory position is likely to be exempt also.

2. Requirements Document (RD)

An RD will replace the Optional Form 8 and position description used under the current classification system. The RD will be prepared by managers using a menu-driven, automated system. The automated system will enable managers to classify and establish many positions without intervention by a human resources specialist. The abbreviated RD will combine the position information, staffing requirements, and contribution expectations into a 1- or 2-page document. Appendix F provides a sample RD for an Electronics Engineer, Level II.

3. Delegation of Classification Authority

Classification authority will be delegated to managers as a means of increasing managerial effectiveness and expediting the classification function. This will be accomplished as follows:

a. Delegated Authority.

1. The NRL Commanding Officer (CO) will delegate classification authority to the management levels shown in Figure 5, i.e., DOR, Associate Directors of Research (ADORS), division superintendents or equivalent levels, and the HRO Director (the HRO Director may further delegate to selected HRO specialists).

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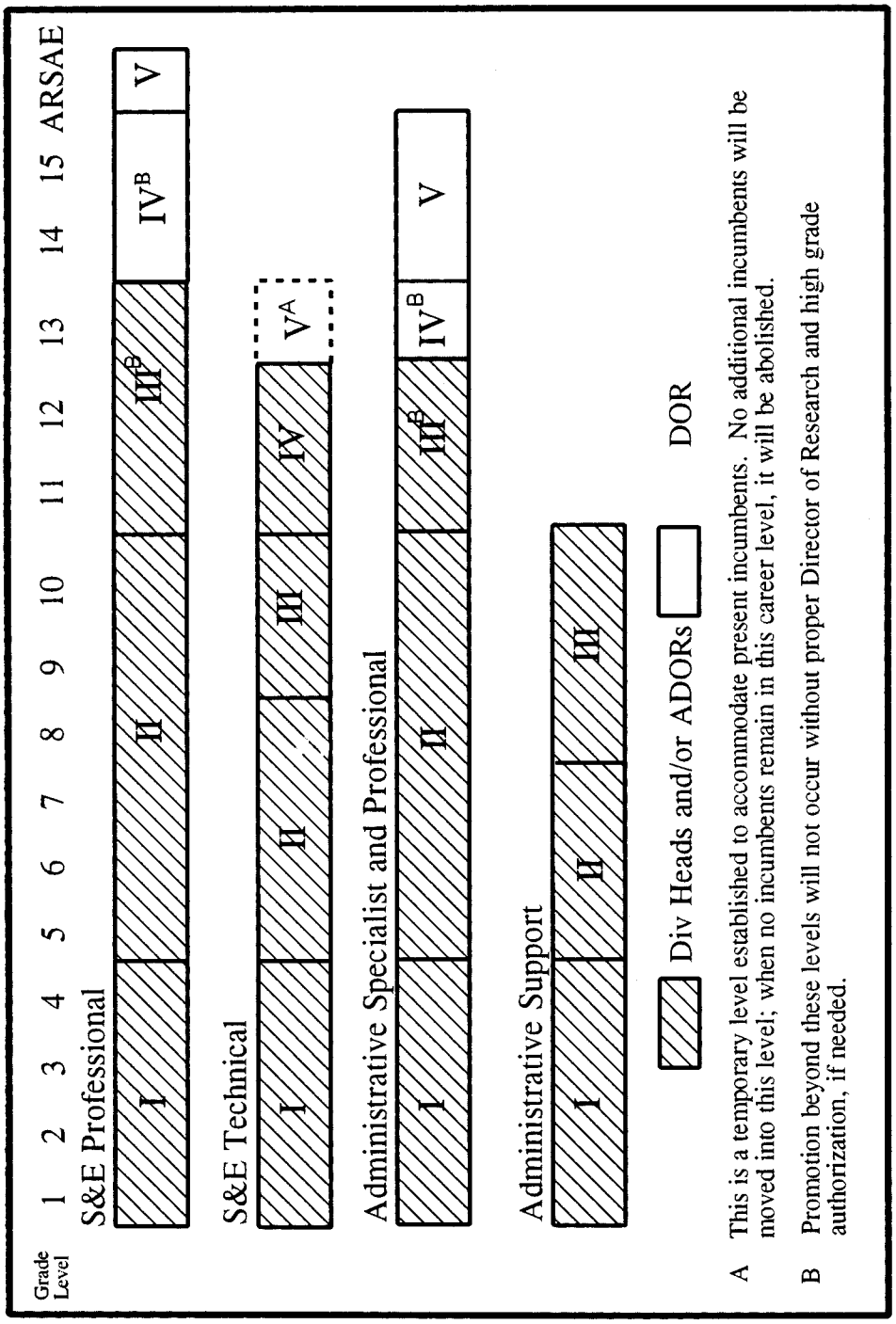


**Figure 5. Levels of Delegated Classification Authority**

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2. The classification approval must be at least one level above the first-level supervisor of the position.

3. First-line supervisors at any level will provide classification recommendations.

4. HRO support will be available for guidance and recommendations concerning the classification process. (Any dispute over the proper classification between a manager and the HRO will be resolved by the Director of Research [DOR].)

b. Position Classification Accountability. Those to whom authority is delegated are accountable to the DOR. The DOR is accountable to the CO. Those with delegated authority are expected to comply with demonstration project guidelines on classification and position management, observe the principle of equal pay for equal work, and ensure that RD's are current. First-line supervisors will develop positions using the automated system. All positions must be approved through the proper chain of command.

*B. Integrated Pay Schedule*

Under the demonstration project, an IPS will be established which will cover all demonstration project positions at NRL. This IPS, which does not include locality pay, will extend from the basic pay for GS–1, step 1 to the basic pay for ES–4 (from ''Rates of Basic Pay for Members of the Senior Executive Service (SES)''). The adjusted basic pay cap, which does include locality pay, is Executive Level IV, currently $118,400, for all demonstration project employees except S&E Professional Career Level V employees. The adjusted basic pay cap for S&E Professional Career Level V employees is Executive Level III, currently $125,900.

1. Annual Pay Action

NRL will eliminate separate pay actions for within-grade increases, general and locality pay increases, performance awards, quality step increases, and most career promotions, and replace them with a single annual pay action (including either permanent or bonus pay or both) linked to the CCS. This will eliminate the paperwork and processing associated with multiple pay actions which average 3 per employee per year.

2. Overtime Pay

Overtime will be paid in accordance with 5 CFR part 550, subpart A. All nonexempt employees will be paid overtime based upon their ''hourly regular rate of pay,'' as defined in existing regulation (5 CFR part 551).

3. Classification Appeals

An employee may appeal the occupational series, title, career track, or career level of his or her position at any time. An employee must formally raise the area of concern to supervisors in the immediate chain of command, either verbally or in writing. If an employee is not satisfied with the supervisory response, he or she may then appeal to the DoD appellate level. If an employee is not satisfied with the DoD response, he or she may then appeal to the OPM only after DoD has rendered a decision under the provisions of this demonstration project. Since OPM does not accept classification appeals on positions which exceed the equivalent of a GS–15 level, appeal decisions involving Career Level V for Advanced Research Scientists and Engineers (ARSAE) will be rendered by DoD and will be final. Appellate decisions from OPM are final and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the Government. Time periods for case processing under 5 CFR subpart F, sections 511.603, 511.604, and 511.605 apply.

An employee may not appeal the accuracy of the RD, the demonstration project classification criteria, or the pay-setting criteria; the propriety of a basic pay schedule; the assignment of occupational series to the occupational family; or matters grievable under an administrative or negotiated grievance procedure or an alternative dispute resolution procedure.

The evaluation of classification appeals under this demonstration project is based upon the demonstration project classification criteria. Case files will be forwarded for adjudication through the HRO and will include copies of appropriate demonstration project criteria.

**4. Advanced Research Scientists and Engineers (ARSAE)**

The NRL demonstration project includes a Career Level V for the Science and Engineering (S&E) Professional Career Track. Career Level V is created for ARSAE's.

Current legal definitions of SES and ST positions do not fully meet the needs of NRL. The SES designation is appropriate for executive level managerial positions whose classification exceeds the GS–15 grade level. The primary knowledge and abilities of SES positions relate to supervisory and managerial responsibilities. Positions classified as STs are reserved for bench research scientists and engineers; these positions require a very high level of technical expertise and they have little or no supervisory responsibility.

NRL currently has positions (typically branch head, principal investigator or team leaders) that have characteristics of both SES and ST classifications. Most branch heads in NRL are responsible for supervising other GS–15 positions, including non-supervisory research engineers and scientists and, in some cases, ST positions. Most branch heads are classified at the GS–15 level, although their technical expertise warrants classification beyond GS–15. Because of their management responsibilities, these individuals are excluded from the ST system. Because of management considerations, they cannot be placed in the SES. Management considers the primary requirement for branch heads to have knowledge of and expertise in the specific scientific and technology areas related to the mission of their branches. Historically, the incumbents of these positions have been recognized within the community as scientific and engineering leaders who possess primarily scientific or engineering credentials and are considered experts in their field. However, they must also possess strong managerial and supervisory ability. Therefore, although some of these employees have scientific credentials that might compare favorably with ST criteria, classification of these positions as ST is not an option because the managerial and supervisory responsibilities inherent in the positions cannot be ignored.

Current GS–15 branch heads will convert into the demonstration project at Career Level IV. After conversion they will be reviewed against established criteria to determine if they should be reclassified to Career Level V. Other positions possibly meeting criteria for classification to Career Level V will be reviewed on a case-by-case basis. The salary range is a minimum of 120 percent of the minimum rate of basic pay for GS–15 with a maximum rate of basic pay established at the rate of basic pay (excluding locality pay) for SES level 4 (ES–4). Vacant positions in Career Level V will be competitively filled to ensure that selectees are preeminent researchers and technical leaders in the specialty fields who also possess substantial managerial and supervisory abilities.

DoD will test Career Level V for a 5-year period. ARSAE positions established in Career Level V will be subject to limitations imposed by OPM and DoD. Career Level V will be established only in an S&T Reinvention Laboratory which employs scientists,

engineers, or both. ARSAE incumbents of Career Level V positions will work primarily in their professional capacity on basic or applied research and secondarily perform managerial or supervisory duties. The number of Career Level V, or equivalent, positions within the DoD will not exceed 40. These 40 positions will be allocated by Assistant Secretary of Defense (Force Management Policy) and administered by the respective services. The number of ARSAE Career Level V positions will be reviewed periodically to determine appropriate position requirements. Career Level V position allocations will be managed separately from SES, ST, and Senior Level (SL) positions. An evaluation of the Career Level V concept will be performed during the fifth year of the demonstration project.

Specific details regarding the control and management of all Level V assets will be included in the demonstration project's operating procedures. Level V is expected to afford NRL the ability to more effectively and efficiently exercise managerial control at the local level, while adhering to merit staffing, affirmative action, and equal employment opportunity principles.

5. Distinguished Contributions Allowance (DCA)

The DCA is a temporary monetary allowance up to 25 percent of basic pay (which, when added to an employee's rate of basic pay, may not exceed the rate of basic pay for ES–4) paid on either a bi-weekly basis (concurrent with normal pay days) or as a lump sum following completion of a designated contribution period(s), or combination of these, at the discretion of NRL. It is not basic pay for any purpose, i.e., retirement, life insurance, severance pay, promotion, or any other payment or benefit calculated as a percentage of basic pay. The DCA will be available to certain employees at the top of their target career levels, whose present contributions are worthy of scores found at a higher career level, whose level of contribution is expected to continue at the higher career level for at least 1 year, and current market conditions require additional compensation.

Assignment of the DCA rather than a change to a higher career level will generally be appropriate for such employees under the following circumstances: employees have reached the top of their target career levels and (1) when it is not certain that the higher level contributions will continue indefinitely (e.g., a special project expected to be of 1- up to 5-year duration), or (2) when no further promotion or compensation opportunities are available or externally imposed limits (such as high-grade restrictions) make changes to higher career levels unavailable, and in either situation, current market conditions compensate similar contributions at a greater rate in like positions in private industry and academia and there is a history of significant recruitment and retention difficulties associated with such positions.

a. Eligibility.

(1) Employees in Levels III and IV of the S&E Professional Career Track and those in Levels III, IV, and V of the Administrative Specialist and Professional Career Track are eligible for the DCA if they have reached the top CCS score for their target career level with a recommendation for a higher Overall Contribution Score (OCS) for their contributions, they have reached the maximum rate of basic pay available for their target career level, there are externally imposed limits to higher career levels or the higher level contributions are not expected to last indefinitely, and market conditions require greater compensation for these contributions.

(2) Employees may receive a DCA for up to 3 years. The DCA authorization will be reviewed and reauthorized as necessary, but at least annually at the time of the CCS appraisal through nomination by the pay pool manager and approval by the DOR. Employees in the S&E Professional Career Track may receive an extension of up to 2 additional years (for a total of 5 years). The DCA extension authorization will be reviewed and reauthorized as necessary, but at least on an annual basis at the time of the CCS appraisal through nomination by the pay pool manager and approval by the DOR.

(3) Monetary payment may be up to 25 percent of basic pay.

(4) Nominees would be required to sign a memorandum of understanding or a statement indicating they understand that the DCA is a temporary allowance; it is not a part of basic pay for any purpose; it would be subject to review at any time, but at least on an annual basis, and the reduction or termination of the DCA is not appealable or grievable.

b. Nomination. In connection with the annual CCS appraisal process, pay pool managers may nominate eligible employees who meet the criteria for the DCA. Packages containing the recommended amount and method of payment of the DCA and a justification for the allowance will be forwarded through the supervisory chain to the DOR. Details regarding this process will be addressed in standard operating procedures. These details will include time frames for nomination and consideration, payout scheme, justification content and format, budget authority, guidelines for selecting employees for the allowance and for determining the appropriate amount, and documentation required by the employee acknowledging he or she understands the criteria and temporary nature of the DCA.

c. Reduction or Termination of a DCA.

(1) A DCA may be reduced or terminated at any time the NRL deems appropriate (e.g., when the special project upon which the DCA was based ends; if performance or contributions decrease significantly; or if labor market conditions change, etc.). The reduction or termination of a DCA is not appealable or grievable.

(2) If an employee voluntarily separates from NRL before the expiration of the DCA, an employee may be denied DCA payment. Authority to establish conditions and/or penalties will be spelled out in the written authorization of an individual's DCA.

d. Lump-Sum DCA Payments.

(1) When NRL chooses to pay part or all of an employee's DCA as a lump sum payable at the end of a designated period, the employee will accrue entitlement to a growing lump-sum balance each pay period. The percentage rate established for the lump-sum DCA will be multiplied by the employee's biweekly amount of basic pay to determine the lump sum accrual for any pay period. This lump-sum percentage rate is included in applying the 25-percent limitation.

(2) If an employee covered under a lump-sum DCA authorization separates, or the DCA is terminated (see paragraph c), before the end of that designated period, the employee may be entitled to payment of the accrued and unpaid balance under the conditions established by NRL. NRL may establish conditions governing lump-sum payments (including penalties in cases such as voluntary separation or separation for personal cause) in general plan policies or in the individual employee's DCA authorization.

e. DCA Budget Allocation. The DOR may establish a total DCA budget allocation that is never greater than 10 percent of the basic salaries of the employees currently at the cap in the S&E Professional Career Track, Career Levels III and IV, and the Administrative Specialist and Professional Career Track, Career Levels III, IV, and V.

f. Concurrent Monetary Payments. Employees eligible for a DCA may be authorized to receive a DCA and a

retention allowance at the same time, up to a combined total of 25 percent of basic pay. A merit increase which raises an employee's pay to the top rate for his or her target career level (thus making the employee eligible for the DCA) may be granted concurrent with the DCA. Receipt of the DCA does not preclude an employee from being granted any award (including a contribution award) for which he or she is otherwise eligible.

*C. Contribution-based Compensation System (CCS)*

1. General

The purpose of the CCS is to provide an effective means for evaluating and compensating the NRL workforce. It provides management, at the lowest practical level, the authority, control, and flexibility needed to develop a highly competent, motivated, and productive workforce. CCS will promote increased fairness and consistency in the appraisal process, facilitate natural career progression for employees, and provide an understandable basis for career progression by linking contribution to basic pay determinations.

CCS combines performance appraisal and job classification into one annual process. At the end of each CCS appraisal period, basic pay adjustment decisions are made based on each employee's actual contribution to the organization's mission during the period.

A separate function of the process includes comparison of performance in critical elements to acceptable standards to identify unacceptable performance that may warrant corrective action in accordance with 5 CFR part 432. Supervisory officials determine scores to reflect each employee's contribution, considering both how well and at what level the employee is performing. Often the two considerations are inseparable. For example, an employee whose written documents need to be returned for rework more often than those of his or her peers also likely requires a closer level of oversight, an important factor when considering level of pay.

The performance planning and rating portions of the demonstration project's appraisal process constitute a performance appraisal program which complies with 5 CFR part 430 and the DoD Performance Management System, except where waivers have been approved. Performance-related actions initiated prior to implementation of the demonstration project (under DoN performance management regulations) shall continue to be processed in accordance with the provisions of the appropriate system.

2. CCS Process

CCS measures employee contributions by breaking down the jobs in each career track using a common set of ''elements.'' The elements for each career track shown in Figure 6 and described in detail in Appendix D have been initially identified for evaluating the contributions of NRL personnel covered by this initiative. They are designed to capture the highest level of the primary content of the jobs in each career level of each career track. Within specific parameters, elements may be weighted or even determined to be not applicable for certain categories of positions. All elements applicable to the position are critical as defined by 5 CFR part 430.

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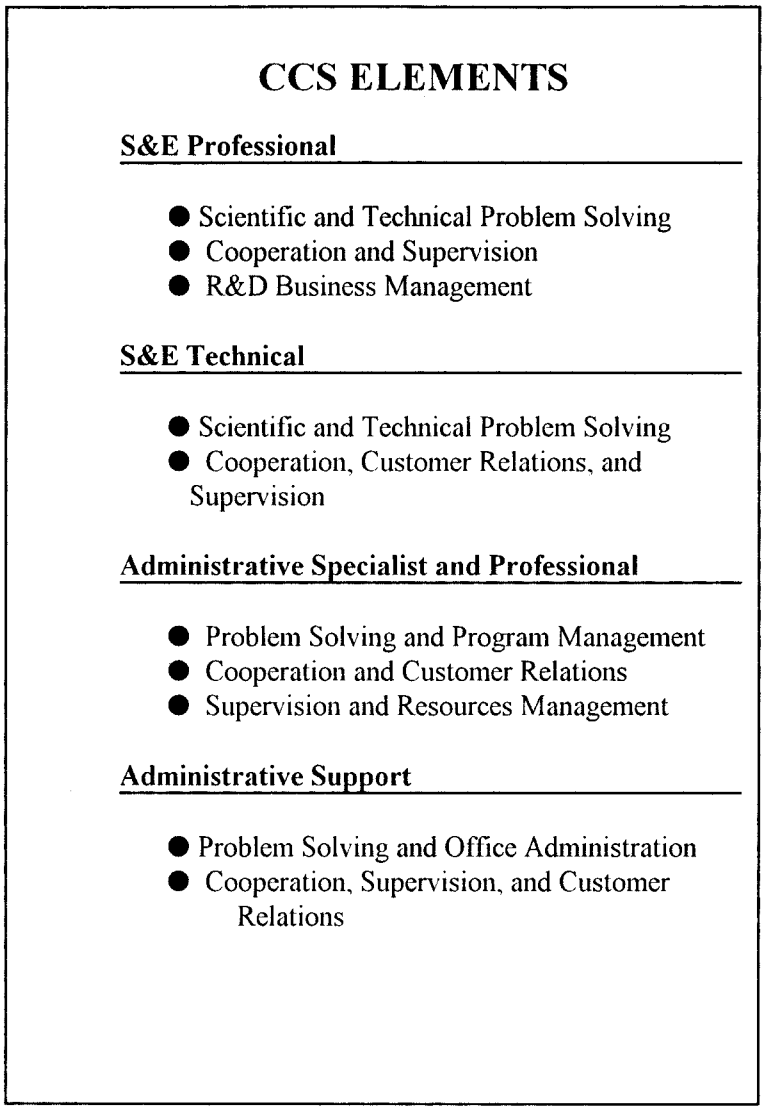


**Figure 6. CCS Elements**

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For each element, ''Discriminators'' and ''Descriptors'' are provided to assist in distinguishing low to high contributions. The discriminators (2–4 for each element) break down aspects of work to be measured within the element. The descriptors (one for each career level for each discriminator) define the expected level of contribution at the top of the related career level for that element.

Scores currently range between 0 and 89; specific relationships between scores and career levels are different for each career track. (See Figure 7.) Basic pay adjustments are based on a comparison of the employee's level of contribution to the normal pay range for that contribution and the employee's present rate of basic pay.

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## CCS Career Level Scores and Basic Pay Ranges*

| LEVEL | SCORE | CCS $K |
|---|---|---|
| **S&E Professional** | | |
| I | 0 - 21 | 13,362 - 24,456 |
| II | 18 - 47 | 20,356 - 44,924 |
| III | 44 - 66 | 37,393 - 70,060 |
| IV | 66 - 80 | 62,553 - 97,201 |
| V | 81 - 89 | 89,728 - 118,000** |
| **S&E Technical** | | |
| I | 0 - 21 | 13,362 - 24,456 |
| II | 18 - 39 | 20,356 - 37,258 |
| III | 36 - 47 | 31,012 - 44,924 |
| IV | 44 - 59 | 37,393 - 59,480 |
| V*** | 59 - 66 | 53,107 - 70,060 |
| **Administrative Specialist and Professional** | | |
| I | 0 - 21 | 13,362 - 24,456 |
| II | 18 - 47 | 20,356 - 44,924 |
| III | 44 - 59 | 37,393 - 59,480 |
| IV | 59 - 66 | 53,107 - 70,060 |
| V | 66 - 80 | 62,553 - 97,201 |
| **Administrative Support** | | |
| I | 0 - 21 | 13,362 - 24,456 |
| II | 18 - 34 | 20,356 - 33,146 |
| III | 31 - 47 | 27,590 - 44,924 |

*Basic pay based on 1999 GS with no locality adjustment.

**Equivalent to the minimum rate of basic pay for Salary Table 1999-SL/ST, and for Salary Table 1999-ES for ES-4 with no locality adjustment.

*** Temporary career level to accommodate current incumbents.

**Figure 7. CCS Career Level Scores and Basic Pay Ranges**

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Supervisors and pay pool panels determine an employee's contribution level for each element considering the discriminators as appropriate to the position. A contribution score, available to that level, is assigned accordingly. For example, a scientist whose contribution in the Technical Problem Solving element for S&E Professionals is determined to be at Level II may be assigned a score of 18 to 47. Eighteen reflects the lowest level of responsibility, exercise of independent judgment, and scope of contribution; and 47 reflects the highest. For Level III contributions, a value of 44 to 66 may be assigned. Each higher career level equates to a higher range of values up to a total of 89 points for S&E professionals. The maximum score of (currently) 89 provides for S&E Professional Level V employees the potential for basic pay of SES Level 4, currently $118,000, plus locality pay up to a cap of Executive Level III, currently $125,900. Each element is judged separately and level of work may vary for different elements. The scores for each element are then averaged to determine the Overall Contribution Score (OCS).

The CCS process will be carried out within a pay pool that typically consists of all employees in an NRL division. Pay pools should have a minimum size of about 35 employees; the largest pay pool may have about 300 employees. To facilitate equity and consistency, element weights and applicability and CCS score adjustments are determined by a pay pool panel, rather than by individual supervisors. Basic pay adjustments, contribution awards, and DCA's may be recommended by the pay pool panel or by individual supervisors. Pay pool panels will consist of supervisory officials or other individuals who are familiar with the organization's work and the contributions of its employees. In most cases division heads (mostly SES members) function as pay pool managers, with final authority to decide weights, scores, basic pay adjustments, and awards.

3. Pay Pool Annual Planning

Prior to the beginning of each annual appraisal period, the pay pool manager and panel will review pay pool-wide expectations in the areas described below.

a. Element Weights and Applicability. As written, all elements are weighted equally. If pay pool panels and managers decide that some elements are more important than others or that some do not apply at all to the effective accomplishment of the organization's mission, they may establish element weights including a weight of zero which renders the element not applicable. Element weights are not intended for application to individual employees. Instead, they may be established only for subcategories of positions, not to exceed a maximum of five subcategories in each career track. Subcategories for S&E Professionals might be: Bench Level S&E, Supervisor, Program Manager, and Support S&E. Subcategories should include a minimum of five positions, when possible. Weights must be consistent within the subcategory.

b. Supplemental Criteria. The CCS level descriptors are designed to be general so that they may be applied to all employees in the career track. Supervisors and pay pool panels may establish supplemental criteria to further inform employees of expected contributions. This may include (but is not limited to) examples of contributions which reflect work at each level for each element, taskings, objectives, and/or standards.

4. Annual CCS Appraisal Process (See Figure 8)

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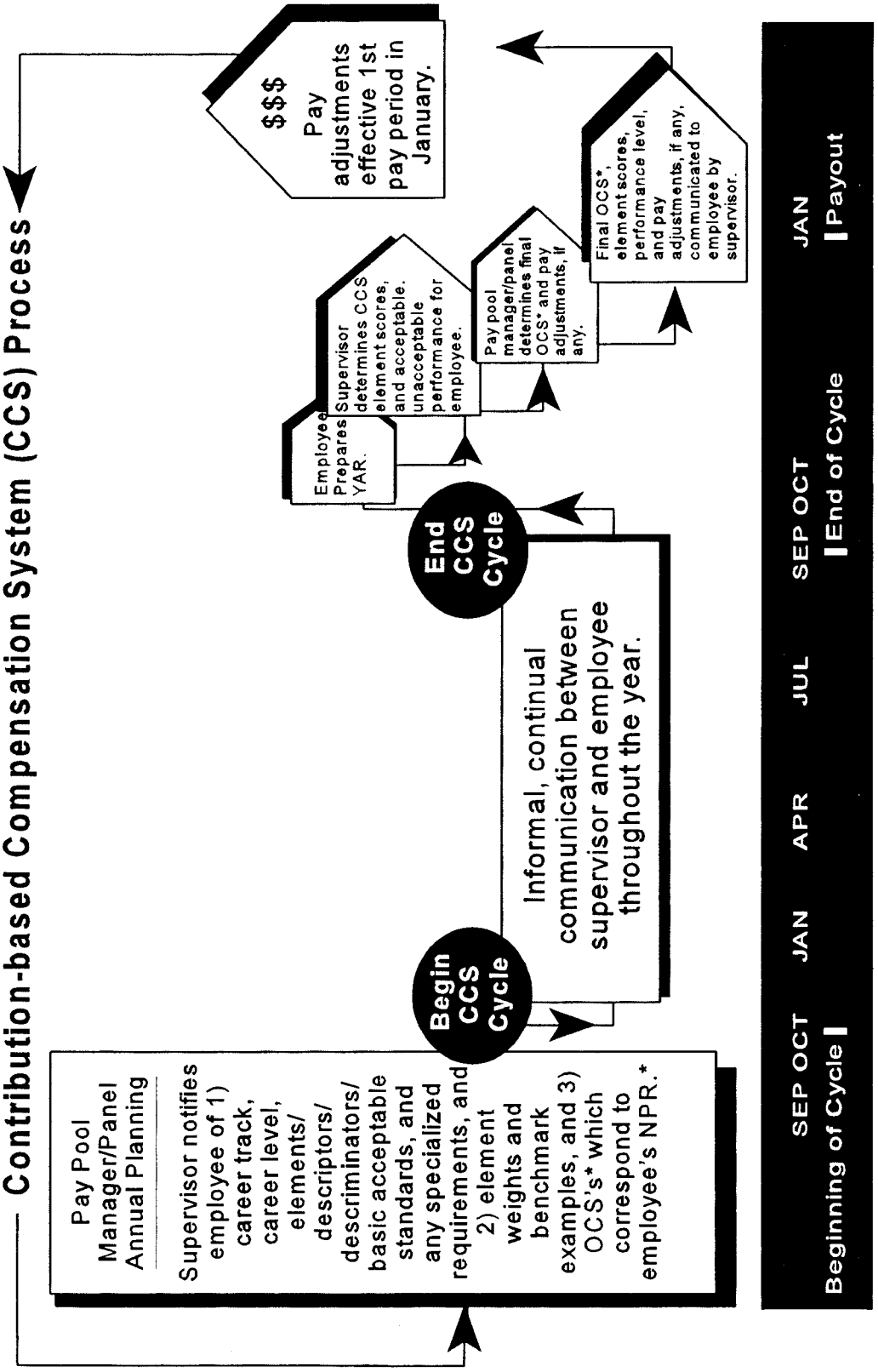


* OCS - Overall Contribution Score
** NPR - Normal Pay Range

Figure 8. Annual CCS Appraisal Process

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The NRL appraisal period will be 1 year, with a minimum appraisal period of 90 days. At the beginning of the appraisal period, or upon an employee's arrival at NRL or into a new position, the following information will be communicated to employees so that they are informed of the basis on which their performance and contributions will be assessed: their career track and career level; applicable elements, descriptors and discriminators; element weights; any established supplemental criteria; OCS's which correspond to each employee's NPR (see section IV.C.6); and basic acceptable performance standards. The CCS Summary Form (Appendix D) will be used to facilitate and document this communication. All employees will be provided this information; however, employees in some situations may not receive CCS scores. These situations are described in section IV.C.5, Exceptions. The communication of information described by this paragraph constitutes performance planning as required by 5 CFR 430.206(b).

Supervisor and employee discussion of organizational objectives, specific work assignments, and individual performance expectations (as needed), should be conducted on an ongoing basis. Either the supervisor or the employee may request a formal review during the appraisal period; otherwise, a documented review is required only at the end of the appraisal period.

At the end of the appraisal period, employees will provide input describing their contributions by preparing a Yearly Accomplishment Report (YAR). Pay pool managers may exempt groups of positions from the requirement to submit YARs; in cases where YARs are not required, employees may submit them at their own discretion. Standard operating procedures will provide guidance for pay pools and employees on the content and format of YARs, and on other types of information about employee contributions which should be developed and considered by supervisors. This will include procedures for capturing contribution information regarding employees who serve on details, who change positions during the appraisal period, who are new to NRL, and other such circumstances.

Supervisors will review the employee's YAR and other available information about the employee's contributions during the appraisal period and determine an initial CCS score for each element considering the discriminators as appropriate to the position. In addition, supervisors will determine whether the employee's performance was acceptable or unacceptable in each element when compared against the basic acceptable performance standards. The rating of the elements (all that are applicable are designated critical as defined by 5 CFR part 430) will serve as the basis for assignment of a summary level of Acceptable or Unacceptable. If any element is rated unacceptable, the summary level will be Unacceptable; otherwise the summary level will be Acceptable. Unacceptable ratings must be reviewed and approved by a higher level than the first-level supervisor.

If an employee changes positions during the last 90 days of the appraisal period, the losing supervisor will conduct a performance rating (i.e., rate each element Acceptable or Unacceptable and determine the summary level) at the time the employee moves to the new position. This will serve as the employee's rating of record. For employees who report to NRL during the last 90 days of the appraisal period, any close-out rating of Acceptable (or its equivalent) or better from another Government agency will serve as the employee's rating of record (the employee will be rated Acceptable). The determination of CCS scores and application of related pay adjustments for such employees is set forth in section IV.C.5, ''Exceptions''.

The pay pool panel will meet to compare scores, make appropriate adjustments, and determine the final OCS for each employee. Final approval of CCS scores and element and summary ratings will rest with the pay pool manager (unless higher level approval is requested or deemed necessary). Supervisors will communicate the element scores, ratings, summary level, and OCS to each employee, and discuss the results and plans for continuing growth. Employees rated Unacceptable will be provided assistance to improve their performance (see paragraph V.A).

The CCS process will be facilitated by an automated system, the CCSDS. During the appraisal process, all scores and supervisory comments will be entered into the CCSDS. The CCSDS will provide supervisors, pay pool panel members, and pay pool managers with background information (e.g., YARS, employees' prior year scores and current basic pay) and spreadsheets to assist them in comparing contributions and determining scores. Records of employee appraisals will be maintained in the CCSDS, and the system will be able to produce a hard copy document for each employee which reflects his or her final approved score.

5. Exceptions

All employees who have worked 90 days or more by the end of the appraisal period will receive a performance rating of record. However, in certain situations NRL does not consider the actual determination of CCS scores to be necessary. In other situations, it may not be feasible to determine a meaningful CCS score. Therefore, the determination of CCS scores will not be required for the following types of employees:

a. Employees on intermittent work schedules;

b. Those on temporary appointments of 1 year or less;

c. Those who work less than 6 months in an appraisal period (e.g., on extended absence due to illness);

d. Those on long-term training for all or much of the appraisal period;

e. Employees who have reported to NRL or to a new position during the 90 days prior to the end of the appraisal period; and

f. Student Educational Employment Program employees.

If supervisors believe that the nature of such an employee's contributions provide a meaningful basis to determine a CCS score, they may appraise employees in the categories listed above, provided that the employee has worked at least 90 days in an NRL position during the appraisal period.

Those employees mentioned above who are not appraised under CCS will not be eligible for merit increases or contribution awards. (This will affect the calculation of service credit for RIF (see section V.C.). All employees listed above will be given full general and locality increases (as described in sections IV.C.7.a, ''General Increases,'' and IV.C.7.c, ''Locality Increases''). All employees are eligible for awards under NRL's Incentive Awards Program, such as ''On-the-Spot'' and Special Act Awards, as appropriate.

6. Normal Pay Range (NPR)—Basic Pay Versus Contribution

The NRL CCS assumes a relationship between the assessed contribution of the employee and a normal range of pay. For all possible contribution scores available to employees, the NPR spans a basic pay range of 12 percent. Employees who are compensated below the NPR for their assessed score are considered ''undercompensated,'' while employees compensated above the NPR are considered ''overcompensated.''

The lower boundary of the NPR is initially established by fixing the basic pay equivalent to GS–1, step 1 of the General Schedule (without locality pay), with a CCS score of zero. The upper

boundary is fixed at the basic pay equivalent to GS–15, step 10 of the General Schedule (without locality pay), with a CCS score of 80. The distance between these upper and lower boundaries for a given overall contribution score is 12 percent of basic pay for all available CCS scores. Using these constraints, the interval between scores is approximately 2.37 percent through the entire range of pay. The lines were extended using the same interval so that the upper boundary of the normal range of basic pay accommodates the basic pay for SES Level IV. This currently occurs at a contribution score near 90. (The actual end point will vary depending on any pay adjustment factors, e.g., general increase.) The formula used to derive the NPR may be adjusted in future years of the demonstration project. See Appendix E for further details regarding the formulation of the NPR.

Each year the boundaries for the NPR plus the minimum and maximum rate of basic pay for each career level (except the maximum rate for Level V of the S&E Professional Career Track) will be adjusted by the amount of the across-the-board GS percentage increase granted to the Federal workforce. At the end of each annual appraisal period, employees' contribution scores will be determined by the CCS process described above, then their overall contribution scores and current rates of basic pay will be plotted as a point on a graph along with the NPR. The position of the point relative to the NPR gives a relative measure of the degree of over-or undercompensation of the employee, as shown in Figure 9. Points which fall below the NPR indicate undercompensation; points which fall above the NPR indicate overcompensation.

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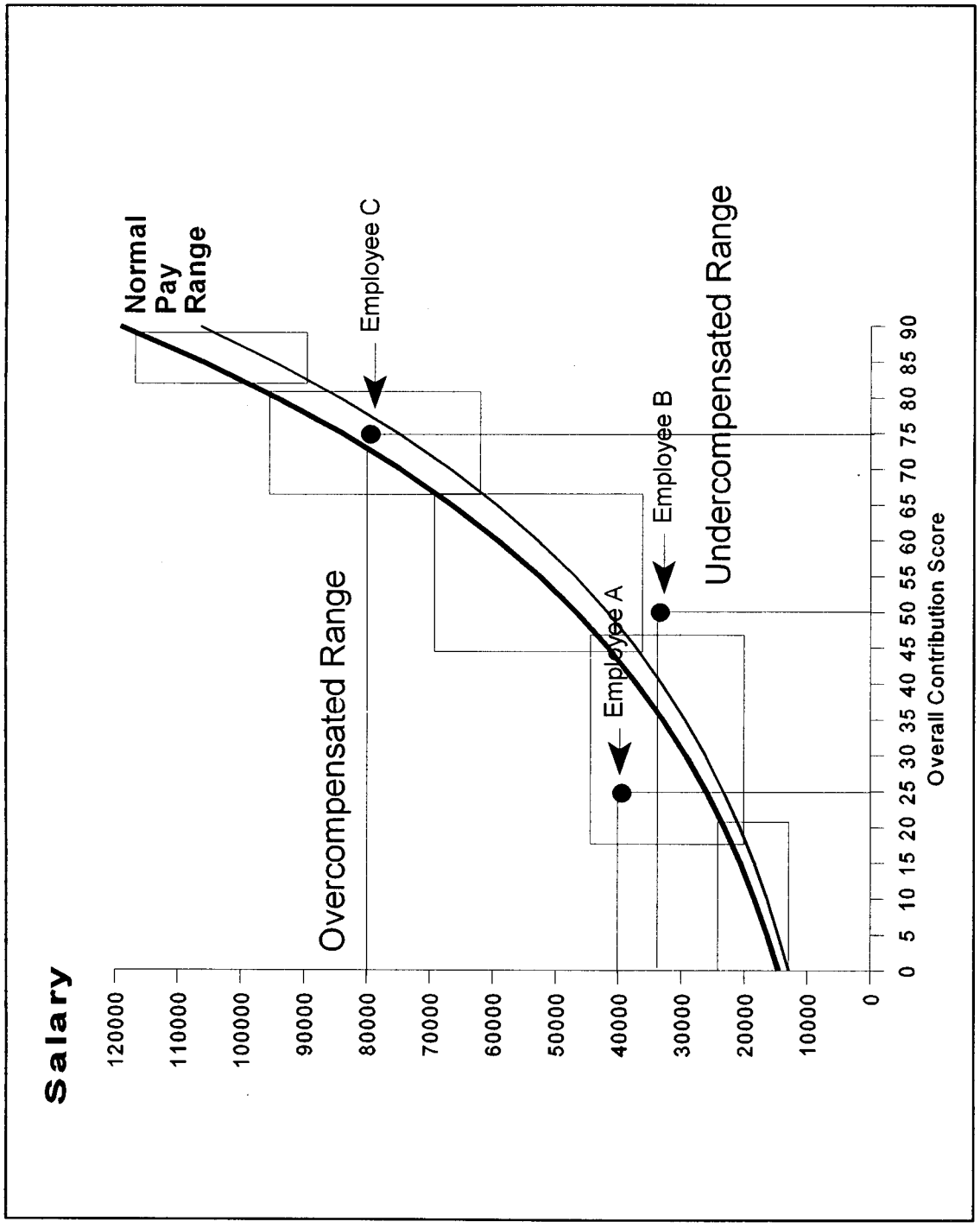


**Figure 9. Plotting OCS and Basic Pay on the NPR for S&E Professionals**

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7. Compensation

Presently, employee pay is established, adjusted, and/or augmented in a variety of ways, including general pay increases, locality pay increases, special rate adjustments, within-grade increases (WGI's), quality step increases (QSI's), performance awards, and promotions. Multiple pay changes in any given year (averaging 3 per employee) are costly to process and do not consider comprehensively the employee's contributions to the organization. Under the demonstration project, NRL will distribute the budget authority from the sources listed above into 4 pay categories: (1) general increase, (2) locality increase, (3) merit increase, and (4) contribution awards. From these pay categories, a single annual pay action would be authorized based primarily on employees' contributions. Competitive promotions will still be processed under a separate pay action; most career promotions will be processed under the CCS.

In general, the goal of CCS is to pay in a manner consistent with employee contribution or, in other words, migrate employees' basic pay closer to the NPR. One result may be a wider distribution of pay among employees for a given level of duties.

After the CCS appraisal process has been completed and the employees' standing relative to the NPR has been determined, the pay pool manager, in consultation with the pay pool panel or other pay pool supervisory and staff officials, will determine the appropriate basic pay change and contribution award, if appropriate, for each employee. Standard operating procedures will provide guidance, including market salary reference data, to assist pay pool managers in making pay determinations. In most cases, the pay pool manager will approve basic pay changes and awards. In some cases, however, approval of a higher level official will be required. Figure 10 summarizes the eligibility criteria and applicable limits for each pay category.

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**Eligibility Chart for Pay Increases**

| Range of Basic Pay | General Increase | Merit Increase | Contribution Award | Locality Pay |
|---|---|---|---|---|
| Over-compensated | Could be reduced or denied | No | No[f] | Yes-Full[d] |
| Normal Range | Yes-Full | Yes[c]-Up to 6% | Yes[a] | Yes-Full[d] |
| Under-compensated | Yes-Full | Yes[b,e] | Yes[a] | Yes-Full[d] |

[a] Up to $10K, over $10K requires DOR approval.
[b] Over 20 percent requires DOR approval.
[c] May not exceed upper rail of normal pay range for employee's OCS score or maximum rate of the employee's career level.
[d] Employees will be entitled to the full locality pay approved for their area subject to applicable limitations.
[e] May not exceed 6% above lower rail of normal pay range or maximum rate of the employee's career level.
[f] Employees on maintained pay are eligible for a contribution award.[a]

Figure 10. Eligibility Chart for Pay Increases

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The Contribution-based Compensation System Data System (CCSDS) will calculate each employee's OCS and his or her standing in relation to the NPR. The system will provide a framework to assist pay pool officials in selecting and implementing a payout scheme. It will alert management to certain formal limits in granting pay increases; e.g., an employee may not receive a permanent increase above the maximum rate of basic pay for his or her career level until a corresponding level change has been effected. Once basic pay and award decisions have been finalized and approved, the CCSDS will prepare the data file for processing the pay actions, and maintain a consolidated record of CCS pay actions for all NRL demonstration project employees.

a. General Increases. General increase budget authority will be available to pay pools as a straight percentage of employee salaries, as derived under 5 U.S.C. 5303 or similar authority. Pay pool panels or managers may reduce or deny general pay increases for employees whose contributions are in the overcompensated category. (See Figure 10.) Such reduction or denial may not place an employee in the

undercompensated category. An employee receiving maintained pay (except one receiving maintained pay for an occupational injury who receives a full general pay increase) will receive half of the across-the-board GS percentage increase in basic pay until the employee's basic pay is within the basic pay range assigned for their current position or for 2 years, whichever is less. NRL employees on pay retention at the time of demonstration project implementation or as a result of placement through the DoN RPL, DoD PPP or the Federal Interagency Career Transition Assistance Plan will receive half of the across-the-board GS percentage increase until the employee's maintained pay is exceeded by the maximum rate for the employee's career level or the maintained pay is ended due to a promotion. General increase authority not expended is available to either the merit increase or contribution award pay categories or both.

b. Merit Increases. Merit increases will be calculated after the determination of employees' general increases. Merit increases may be granted to employees whose contribution places them in the ''normal'' or ''undercompensated'' categories. (See Figure 10.) In general, the higher the range in which the employee is contributing compared to his or her basic pay, the higher the merit increase should be. However, the following limitations apply: a merit increase may not place any employee's basic pay (1) in the ''overcompensated'' category (as established by the NPR for the upcoming year, which has been adjusted by the amount of the new general increase); (2) in excess of SES Level IV; (3) in excess of the maximum rate of basic pay for the individual's career level (unless the employee is being concurrently advanced to the higher career level); or (4) above any outside-imposed dollar limit (e.g., high-grade ceiling). Merit increases for employees in the NPR will be limited to 6 percent of basic pay, not to exceed the upper limit of the NPR for the employee's score. In addition, merit increases for employees in the undercompensated range may not exceed 6 percent above the lower rail of the NPR, or 20 percent of basic pay without DOR approval.

The NRL merit increase category will include what is now WGI's, QSI's, and career ladder promotions. This category will be set each year near 2.4 percent of total NRL basic pay rates (including the general increase rate approved for the coming year). This is close to the average of NRL's expenditures for step increases and promotions over the last 3 years. This percentage has been used by other demonstration projects in the past. The 2.4 percent figure will be adjusted as necessary to facilitate cost containment over the life of the demonstration project.

The amount of budget authority available to each pay pool will be determined annually by the DOR. Factors to be considered by the DOR in determining annual budget authority may include market salaries, mission priorities, and organizational growth. Because statistical variations will occur in year-to-year personnel growth, any unexpended merit increase authorities may be carried over for use in the next cycle or transferred to the Contribution Awards Category. Any unexpended merit increase authority must be used no later than the payout for the next rating cycle.

c. Locality Increases. All employees will be entitled to the locality pay increase authorized by law for their official duty station. In addition, the locality-adjusted pay of any employee may not exceed the rate for Executive Level IV, currently $118,400, except that, for employees in Career Level V of the S&E Professional Career Track, the locality-adjusted pay cap is Level III of the Executive Schedule (currently $125,900 from ''Rates of Pay for the Executive Schedule,'' effective since January 1998).

d. Contribution Awards. Authority to pay contribution awards (lump-sum payments recognizing significant contributions) will be initially available to pay pools as a straight 1.5 percent of employees' basic pay (similar to the amount currently available for performance awards). The percentage rate may be adjusted in future years of the demonstration project. In addition, unexpended general increase and merit increase budget authorities may be used to augment the award category. Contribution awards may be granted to those employees whose contributions place them in the ''normal'' or ''undercompensated'' category, and to employees in the ''overcompensated'' category who are on maintained pay. Standard operating procedures will provide guidance to pay pool managers in establishing and applying criteria to determine significant contributions which warrant awards. An award exceeding $10,000 requires DOR approval. (See Figure 10.) Any unexpended contribution award authority must be used at the payout for the next rating cycle. Pay pools may also grant time-off as a contribution award, in lieu of or in addition to cash.

8. Career Movement Based on CCS

Movement through the career levels will be determined by contribution and basic pay at the time of the annual CCS appraisal process.

The NRL demonstration project is an integrated system that links level of work to be accomplished (as defined by a career track and career level) with individual achievement of that work (as defined by an OCS) to establish the rate of appropriate compensation (as defined by the career track pay schedule), and to determine progression through the career track. This section addresses only changes in level which relate directly to the CCS determination.

When an employee's OCS falls within 3 scores of the top score available to his or her current career level, supervisors should consider whether it is appropriate to advance the employee to the next higher level (refer to IV.A.1.a for other criteria). If progression to the next higher level is deemed warranted, supporting documentation would be included with the CCS appraisal and forwarded through the appropriate channels for approval. If advancement is not considered appropriate at this time, the employee would remain in his or her current career level. Future basic pay raises would be capped by the top of the employee's current career level unless the employee progresses to the next higher career level through a CCS-related promotion, an accretion of duties promotion, or a competitive promotion.

a. Advancements in Level Which May be Approved by the Pay Pool Manager. Advancements to all levels except Levels IV and V of the S&E Professional and the Administrative Specialist and Professional Career Tracks may be approved by the pay pool manager (this may be changed in future years of the demonstration project if there are changes in the way high-grade positions are defined).

b. Advancements in Level Which Must be Approved by the Director of Research (DOR). Advancement to (1) levels outside target career levels or established position management criteria; (2) Levels IV and V of the S&E Professional Career Track; and (3) Levels IV and V of the Administrative Specialist and Professional Career Track require approval by the DOR or his or her designee. These levels include (presently) all of NRL's high-grade billets. Details regarding the process for nomination and consideration, format, selection criteria, and other aspects of this process will be addressed in the standard operating procedures. In the event that unanticipated high-grade

turnover results in vacancies prior to the end of the appraisal period, NRL may carry out this process at other times of the year.

c. Advancement to Level V of the Science and Engineering (S&E) Professional Career Track. Vacancies in the billets allotted to NRL in this level will be filled as described in section IV.B.4.

d. Regression to Lower Level. (See Figure 9, ''Employee A''). If an employee is contributing less than expected for the level at which he or she is being paid, the individual may regress into a lower career level through reduction or denial of general increases and ineligibility for merit increases. (This is possible because the NPR plus the minimum and maximum pay rates for each career level will be adjusted upwards each year by the across-the-board GS percentage increase in basic pay.) If the employee's basic pay regresses to a point below the pay overlap area between his or her level and the next lower level, it will no longer be appropriate to designate him or her as being in the higher level. Therefore, the employee will be formally changed to the lower level. The employee will be informed of this change in writing, but procedural and appeal rights provided by 5 U.S.C. 4303 and 7512 (and related OPM regulations) will not apply (except in the case of employees who have veterans' preference). NRL is providing for waivers of the statute and regulations for such actions. Further, because a change to lower level under such circumstances is not discretionary, the change may not be grieved under NRL's administrative grievance procedures.

9. CCS Grievance Procedures

An employee may grieve the appraisal received under CCS using procedures specifically designed for CCS appraisals. Under these procedures, the employee's grievance will first be considered by the pay pool panel, who will recommend a decision to the pay pool manager. If the employee is not satisfied with the pay pool manager's decision, he or she may file a second-step grievance with the next higher level management official. This official will render a final NRL decision on the grievance.

The following are not grievable: pay actions resulting from CCS (receipt, non-receipt or amount of general increase, merit increase, DCA or contribution award); reductions in level without reduction in pay due to regression (see section IV.C.8.d); any action for which another appeal or complaint process exists.

## V. Separations

*A. Performance-Based Reduction in Pay or Removal Actions*

This section applies to reduction in pay or removal of demonstration project employees based solely on unacceptable performance. Adverse action procedures under 5 CFR part 752 remain unchanged.

When a supervisor determines during or at the end of the appraisal period that the employee is not completing work assignments satisfactorily, the supervisor must make a determination as to whether the employee is performing unacceptably in one or more of the critical elements. All CCS elements applicable to the employee's position are critical as defined by 5 CFR part 430.

Unacceptable performance determinations must be made by comparing the employee's performance to the acceptable performance standards established for elements.

At any time during or at the end of the appraisal period that an employee's performance is determined to be unacceptable in one or more critical elements, the employee will be provided assistance in improving his or her performance. This will normally include clarifying (or further clarifying) the meaning of terms used in the acceptable performance standards (e.g., ''timely'' ''thorough research'' and ''overall high quality'') as they relate to the employee's specific responsibilities and assignments. An employee whose performance is unacceptable after he or she has been given a reasonable opportunity to improve may be removed or reduced in grade or level, in accordance with the provisions of 5 U.S.C. 4303 and related OPM regulations. Employees may also be removed or reduced in grade or level based on unacceptable performance under the provisions of 5 U.S.C. 7512. All procedural and appeal rights set forth in the applicable statute and related OPM regulations will be afforded to demonstration project employees removed or reduced in grade or level for unacceptable performance.

*B. RIF*

1. RIF Authority

Under the demonstration project, NRL would be delegated authority to approve RIF as defined in Secretary of the Navy Instruction 12351.5E and the use of separation pay incentives.

2. RIF Definitions

a. Competitive Area. A separate competitive area will be established by geographic location for all personnel included in the demonstration project.

b. Competitive Level. Positions in the same occupational career level, which are similar enough in duties and qualifications that employees can perform the duties and responsibilities including the selective placement factor, if any, of any other position in the competitive level upon assignment to it, without any loss of productivity beyond what is normally expected.

c. Service Computation Date (SCD). The employee's basic Federal SCD would be adjusted for CCS results credit.

(1) CCS Process Results Credit.

a. An employee's basic Federal SCD may be credited with up to 20 years credit based on the results of the CCS process. The CCS RIF Assessment Category would be used to determine the number of RIF years credited. The CCS RIF Assessment Category is the combination of the employee's standing under the CCS relative to the NPR and any merit increase, DCA, contribution award or promotion. Figure 11 shows the RIF years available for each CCS RIF Assessment Category.

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| Assessment Category | | RIF Years Available |
|---|---|---|
| 0 = | Employees within the over-compensated range without any portion of a general increase. | 0 |
| 1 = | Employees receiving maintained pay or any portion of a general increase but no merit increase or contribution award. | 12 |
| 2 = | Employees receiving a merit increase or contribution award or promotion. | 16 |
| 3 = | Employees receiving (1) a combination (at least two) of a merit increase, contribution award or promotion, or (2) with a capped salary and receiving a contribution award, DCA, or promotion. | 20 |
| Final RIF Credit: Average of the three most recent CCS Process Results received during the 4-year period prior to the cutoff date. | | |

**Figure 11. CCS RIF Assessment Categories**

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b. If an employee has fewer than three CCS process results, the value (RIF years available) of the actual number of process results on record will be divided by the number of actual process results on record. In cases where an employee has no actual CCS process results, the employee will be given the additional RIF CCS process results credit for the most common, or ''modal'' NRL demonstration project CCS RIF Assessment Category for the most recent CCS appraisal period.

(2) Credit from Other Rating Systems. Employees who have been rated under different patterns of summary rating levels will receive RIF appraisal credit as follows:

—If there are any ratings to be credited for the RIF given under a rating system which includes one or more levels above fully successful (Level 3), employees will receive credit as follows: 12 years for Level 3, 16 years for Level 4, 20 years for Level 5; or

—If an employee comes from a system with no levels above Fully Successful (Level 3), they will receive credit based on the demonstration project's modal CCS RIF assessment category.

(3) RIF Cutoff Date. To provide adequate time to properly determine employee retention standing, the cutoff date for use of new CCS process results is set at 30 days prior to the date of issuance of RIF notices.

3. Displacement Rights

(a) Displacement Process. Once the position to be abolished has been identified, the incumbent of that position may displace another employee within the incumbent's current career track and career level when the incumbent has a higher retention standing and is fully qualified for the position occupied by an employee with a lower standing. If there are no displacement rights within the incumbent's current career track and career level, the incumbent may exercise his or her displacement rights to any position previously held in the next lower career level, regardless of career track, when the position is held by an employee with a lower retention standing. In the case of all preference eligibles, they may displace up to the equivalent of 3 grades or intervals below the highest equivalent grade of their current career level in the same or a different career track regardless of whether they previously held the position provided they are fully qualified for the position and the position is occupied by an employee with a lower retention standing. Preference eligibles with a compensable service connected disability of 30 percent or more may displace an additional 2 GS grades or intervals (total of 5 grades) below the highest equivalent grade of their current career level provided they have previously held the position and the position is occupied by an employee in the same subgroup with a later RIF service computation date.

(b) Retention Standing. Retention standing is based on tenure, veterans' preference, length of service, and contribution.

(c) Vacant Positions. Assignment may be made to any available vacant position including those with promotion potential in the competitive area.

(d) Ineligible for Displacement Rights. Employees who have been notified in writing that their performance is considered to be unacceptable.

(e) Change to Lower Level due to an Adverse or Performance-based Action. An employee who has received a written decision to change him or her to

a lower level due to adverse or performance based action will compete from the position to which he or she will be or has been demoted.

3. Notice Period

The notice period and procedures in 5 CFR subpart H, section 351.801 will be followed.

4. RIF Appeals

Under the demonstration project, employees affected by a RIF action, other than a reassignment, maintain their right to appeal to the Merit Systems Protection Board if they feel the reason for the RIF is not valid or if they think the process or procedures were not properly applied.

5. Separation Incentives

NRL will have delegated authority to approve separation incentives and will use the current calculation methodology of a lump sum payment equal to an employee's severance pay calculation or $25,000, whichever is less.

6. Severance Pay

Employees will be covered by the severance pay rules in 5 CFR part 550, subpart G, except that NRL will establish rules for determining a ''reasonable offer'' that parallel Title 5 rules.

7. Outplacement Assistance

All outplacement assistance currently available would be continued under the demonstration project.

**VI. Demonstration Project Transition**

A. Initial Conversion or Movement to the Demonstration Project

1. Placement into Career Tracks and Career Levels

Conversion or movement of GS employees into the demonstration project will be into the career track and career level which corresponds to the employee's current GS grade and basic pay. If conversion into the demonstration project is accompanied by a simultaneous change in the geographic location of the employee's duty station, the employee's overall GS pay entitlements (including locality rate) in the new area will be determined before converting the employee's pay to the demonstration project pay system. Employees will be assured of placement within the new system without loss in total pay. Once under the demonstration project, employee progression through the career tracks and career levels up to their target career level is dependent upon contribution score, not upon previous methods (e.g., WGI's, QSI's, or career promotions as previously defined).

2. Conversion of Retained Grade and Pay Employees

NRL's workforce will be grouped into career tracks and associated pay levels with designated pay ranges rather than the traditional grade and step. Therefore, grade and pay retention will be eliminated. NRL will grant ''maintained pay'' (as defined in section III.G.2, ''Maintained Pay''), which is related to the current meaning of ''retained pay'' but does not provide for indefinite retention of pay except in certain situations. Employees currently on grade or pay retention will be immediately placed on maintained pay at their current rate of basic pay if this rate exceeds the maximum rate for their career level and ''grandfathered'' in the appropriate career level. Employees on grade retention will be placed in the career level encompassing the grade of their current position. Employees will receive half of the across-the-board GS percentage increase in basic pay and the full locality pay increase until their basic pay is within the appropriate basic pay range for their current position without time limitation.

3. WGI Buy-In

The participation of all covered NRL employees in the demonstration project is mandatory. However, acceptance of the system by NRL employees is essential to the success of the demonstration project. Therefore, on the date that employees are converted to the project pay plan, they will be given a permanent increase in pay equal to the earned (time spent in step) portion of their next WGI based on the value of the WGI at the time of conversion so that they will not feel they are losing a pay entitlement accrued under the GS system. Employees will not be eligible for this basic pay increase if their current rating of record is unacceptable at the time of conversion. There will be no prorated payment for employees who are at step 10 or receiving a retained rate at the time of conversion into the demonstration project.

4. Conversion of Special Salary Rate Employees

Employees who are in positions covered by a special salary rate prior to the demonstration project will no longer be considered a special salary rate employee under the demonstration project. These employees will, therefore, be eligible for full locality pay. The adjusted salaries of these employees will not change. Rather, the employees will receive a new basic rate of pay computed by dividing their basic adjusted pay (higher of special salary rate or locality rate) by the locality pay factor for their area. A full locality adjustment will then be added to the new basic pay rate. Adverse action will not apply to the conversion process as there will be no change in total salary. However, if an employee's new basic pay rate after conversion to the demonstration project pay schedule exceeds the maximum basic pay authorized for the career level, then the employee will be granted maintained pay under paragraph III.G.2 until the employee's salary is within the range of the career level.

For example, an Electronics Engineer, GS–855–9, step 5, is paid $44,715 per annum in accordance with special GS salary rates as of January 1999 for Table Number: 0422. The employee is located in the locality area of Washington-Baltimore, DC-MD-VA-WV. Under the demonstration project, the computation of the engineer's new basic rate of pay with a full locality adjustment and WGI buy-in is computed as follows:

a. Basic adjusted pay divided by locality pay factor=new basic rate of pay

b. New basic rate of pay multiplied by the full locality adjustment for current area=full locality adjustment amount for special rate employees.

c. New basic rate of pay + WGI buy-in amount × locality pay factor = demonstration special rate for conversion.

EXAMPLE:

a. $44,715 (basic adjusted pay) divided by 1.0787 (locality pay factor) = $41,453 (new basic rate of pay)

b. $41,453 (new basic rate of pay) × .0787 (full locality adjustment factor for current area) = $3,262 (full locality adjustment amount)

c. $41,453 (new basic rate of pay) + $500 (example WGI buy-in amount) = $41,953 (new conversion basic rate of pay) × 1.0787 (locality pay factor) = $45,254 (demonstration special rate for conversion)

*B. CCS Startup*

CCS elements, descriptors, discriminators and standards have been established as the appraisal criteria for the 1998–1999 cycle which began June 1, 1998. Except for its compensation components, CCS is consistent with DoN's two-level appraisal program, which was effected in 1998. The CCS process will be used to appraise employees at the end of the 1998–1999 cycle on September 30, 1999. The first CCS payout is expected to occur at the beginning of the first full pay period in January 2000.

*C. Training*

An extensive training program is planned for everyone in the demonstration project including the supervisors, managers, and administrative staff. Training will be tailored, as discussed below, to fit the requirements of every employee included in the demonstration project and will address employee concerns and as well as the benefits to employees. In addition, leadership training will be provided, as needed, to managers and supervisors as the new system places more responsibility and decision making authority on them.

NRL training personnel will provide local coordination and facilities, supplemented by contractor support as needed. Training will be provided at the appropriate stage of the implementation process.

1. Types of Training

Training packages will be developed to encompass all aspects of the project and validated prior to training the workforce. Specifically, training packages will be developed for the following groups of employees:

a. NRL Employees. NRL demonstration project employees will be provided an overview of the demonstration project and employee processes and responsibilities.

b. Supervisors and Managers. Supervisors and managers under the demonstration project will be provided training in supervisory and managerial processes and responsibilities under the demonstration project.

c. Support Personnel. Administrative support personnel, HRO personnel, financial management personnel, and Management Information Systems Staff will be provided training on administrative processes and responsibilities under the demonstration project.

*D. New Hires Into the Demonstration Project*

The following steps will be followed to place employees (new hires) entering the system:

a. The career track and career level will be determined based upon the employee's education and experience in relation to the duties and responsibilities of the position in which he or she is being placed, consistent with OPM qualification standards.

b. Basic pay will be set based upon available labor market considerations relative to special qualifications requirements, scarcity of qualified candidates, programmatic urgency, and education and experience of the new candidate.

c. Employees placed through the DoN RPL, the DoD PPP, or the Federal Interagency Career Transition Assistance Plan who are eligible for maintained pay will receive one half of the across-the-board GS percentage increase in basic pay and the full locality pay increase until the employee's basic pay is within the basic pay range of the career track and career level to which assigned. Employees are eligible for maintained pay as long as there is no break in service and if the employee's rate of pay exceeds the maximum rate of his or her career level.

*E. Conversion or Movement From Demonstration Project*

In the event the demonstration project is terminated or employees leave the demonstration project through promotion, change to lower grade, reassignment or transfer, conversion back to the GS system may be necessary. The converted GS grade and GS rate of pay must be determined before movement or conversion out of the demonstration project and any accompanying geographic movement, promotion, or other simultaneous action. An employee will not be converted at a level which is lower than the GS grade held immediately prior to entering the Demonstration project, unless, since that time, the employee has undergone a reduction in career level. The converted GS grade and rate will become the employee's actual GS grade and rate after leaving the demonstration project and will be used to determine the pay action and GS pay administration rules for employees who leave the project to accept a position in the traditional Civil Service system. The following procedures will be used to convert the employee's demonstration project career level to a GS equivalent grade and the employee's demonstration project rate of pay to the GS equivalent rate of pay.

1. Grade Determination

Employees will be converted to a GS grade based on a comparison of the employee's current adjusted rate of basic pay to the highest GS applicable rate range considering only those grade levels that are included in the employee's current career level. The highest GS applicable rate range includes GS basic rates, locality rates, and special salary rates. Once a grade range is determined, the following procedures will be used to determine the GS grade:

a. Identify the highest GS grade within the current career level that accommodates the employee's adjusted rate of basic pay (including any locality payment).

b. If the employee's adjusted rate of basic pay equals or exceeds the applicable step 4 rate of the identified highest GS grade, the employee is converted to that grade.

c. If the employee's adjusted rate of basic pay is lower than the applicable step 4 of the highest grade, the employee is converted to the next lower grade.

d. If under the above-described ''step 4'' rule, the employee's adjusted project rate exceeds the maximum rate of the grade assigned but fits in the rate range for the next higher applicable grade (i.e., between step 1 and step 4), then the employee shall be converted to the next higher applicable grade.

e. For two-grade interval occupations, conversion should not be made to an intervening (even) grade level below GS–11.

f. Employees in Level IV of the Administrative Specialist and Professional Career Track will convert to the GS–13 level.

2. Pay Setting

Pay conversion will be done before any geographic movement or other pay-related action that coincides with the employee's movement or conversion out of the demonstration project. The employee's pay within the converted GS grade is set by converting the employee's demonstration project rate of pay to a GS rate of pay as follows:

a. The employee's demonstration project adjusted rate of pay (including locality) is converted to a rate on the highest applicable adjusted rate range for the converted GS grade. For example, if the highest applicable GS rate range for the employee is a special salary rate range, the applicable special rate salary table is used to convert the employee's pay.

b. When converting an employee's pay, if the rate of pay falls between two steps of the conversion grade, the rate must be set at the higher step.

c. Employees whose basic pay exceeds the maximum basic pay of the highest GS grade for their career level will be converted to the highest grade in their career level. NRL will coordinate with OPM to prescribe a procedure for determining the GS-equivalent pay rate for employees whose rate of pay exceeds the maximum rate of basic pay for their converted grade.

3. ARSAE

Employees in Career Level V of the S&E Professional Career Track will convert to the GS–15 grade level. NRL will develop a procedure to ensure that

S&E employees entering Career Level V understand that if they leave the demonstration project and their adjusted pay exceeds the GS–15, step 10 rate, there is no entitlement to retained pay. Their GS-equivalent rate will be deemed to be the rate for GS–15, step 10. For those Career Level V employees paid below the adjusted GS–15, step 10 rate, the post-conversion rates will be set using the converted rates in applying the highest previous rate rule.

4. Determining Date of Last Equivalent Increase

The last equivalent increase will be the date the employee received a CCS pay increase, was eligible to receive a CCS pay increase, or received a promotion, whichever occurred last.

**VII. Demonstration Project Duration**

*A. General*

Section 342 of the National Defense Authorization Act for fiscal year 1995 (Public Law 103–337) does not require a mandatory expiration date for this demonstration project. The project evaluation plan addresses how each intervention will be comprehensively evaluated for at least the first 5 years of the demonstration project. Major changes and modifications to the interventions can be made through another announcement in the **Federal Register** and would be made if formal evaluation data warrant a change.

*B. 5-Year Reexamination*

At the 5-year point, the entire demonstration will be reexamined for either: (a) permanent implementation, (b) modification and another test period, or (c) termination of the project.

**VIII. Demonstration Project Evaluation Plan**

*A. Overview*

Chapter 47 of 5 U.S.C. requires that an evaluation be performed to measure the effectiveness of the proposed laboratory demonstration project, and its impact on improving public management. A comprehensive evaluation plan for the entire laboratory demonstration program, originally covering 24 DoD laboratories, was developed by a joint OPM/DoD Evaluation Committee in 1995. This plan was submitted to the Office of Defense Research & Engineering and was subsequently approved (see *Proposed Plan for Evaluation of the Department of Defense S&T Laboratory Demonstration Program,* Office of Merit Systems Oversight and Effectiveness, June 1995). The main purpose of the evaluation is to determine whether the waivers granted result in a more effective personnel system and improvements in ultimate outcomes (i.e., laboratory effectiveness, mission accomplishment, and customer satisfaction). In March 1996, the Director of Defense Research & Engineering (DDR&E), who is responsible for laboratory management, entered into an agreement with OPM's Personnel Resources and Development Center (PRDC) to conduct the external evaluation of the project from FY1996 to FY2001. NRL will make arrangements for the continued evaluation of the project beyond the PRDC evaluation period and throughout the life of the demonstration project so as to fulfill the requirements of 5 U.S.C. Chapter 47.

*B. Evaluation Models*

Figure 12 shows a general model for the evaluation of the demonstration program. The model is designated to evaluate two levels of laboratory performance: intermediate and ultimate outcomes. The intermediate outcomes are defined as the results from specific personnel system changes and the associated waivers of law and regulation expected to improve human resource (HR) management (i.e., cost, quality, timeliness). The ultimate outcomes are determined through improved laboratory performance, mission accomplishment, and customer satisfaction. Although it is not possible to establish a direct causal link between changes in the HR management system and organizational effectiveness, it is hypothesized that the new HR system will contribute to improved organizational effectiveness.

Organizational performance measures established by the laboratories will be used to evaluate the impact of a new HR system on the ultimate outcomes. The evaluation of the new HR system for any given laboratory will take into account the influence of three factors on laboratory performance: context, degree of implementation, and support of implementation. The context factor refers to the impact which intervening variables (i.e., downsizing, changes in mission, or the economy) can have on the effectiveness of the program. The degree of implementation considers: (1) the extent to which the proposed HR changes are given a fair trial period; (2) the extent to which the proposed changes are implemented; and (3) the extent to which the proposed changes conform to the HR interventions as planned. The support of implementation factor accounts for the impact that factors such as training, internal regulations and automated support systems have on the support available for program implementation. The support for program implementation factor can also be affected by the personal characteristics (e.g., attitudes) of individuals who are implementing the program.

The degree to which the project is implemented and operated will be tracked to ensure that the evaluation results reflect the project as it was intended. Data will be collected to measure changes in both intermediate and ultimate outcomes, as well as any unintended outcomes which may happen as a result of any organizational change. In addition, the evaluation will track the impact of the project and its interventions on veterans and other EEO groups, the Merit Systems Principles, and the Prohibited Personnel Practices. Additional measures will be added to the model in the event that changes or modifications are made to the demonstration plan.

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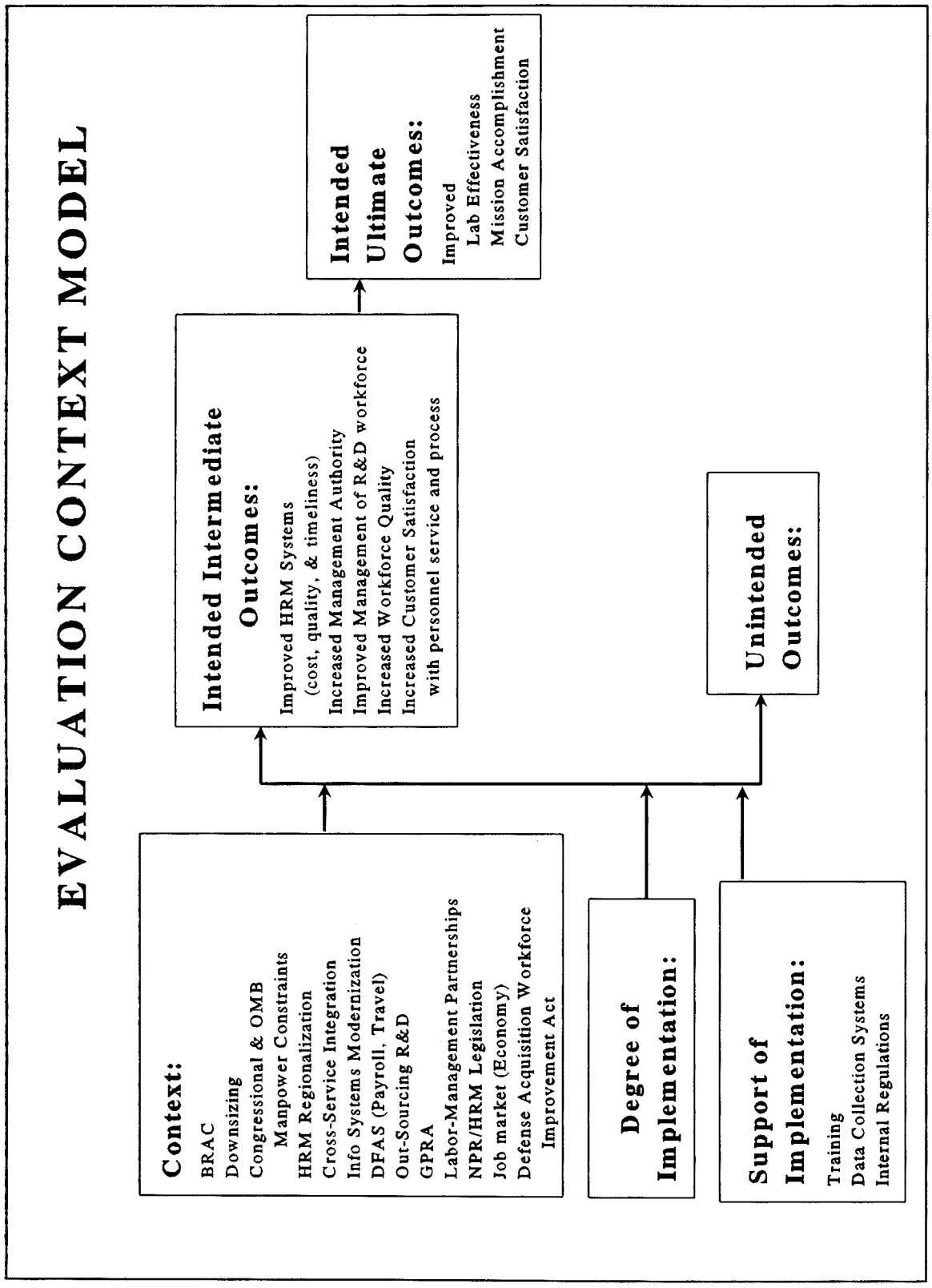


Figure 12. Evaluation Context Model

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An intervention impact model will be used to measure the effectiveness of the personnel system interventions implemented at NRL (see Appendix G). The intervention impact model specifies each personnel system change or ''intervention'' will be measured and shows: (1) the expected effects of the intervention, (2) the corresponding measures, and (3) the data sources for obtaining the measures. Although the model makes predictions about the outcomes of specific interventions, causal attributions about the full impact of specific interventions will not always be possible for several reasons. For example, many of the initiatives are expected to interact with each other and contribute to the same outcomes. In addition, the impact of changes in the HR system may be mitigated by context variables (e.g., the job market, legislation, and internal support systems) or support factors (e.g., training, automated support systems).

*C. Evaluation*

A modified quasi-experimental design will be used for the evaluation of the S&T Laboratory Demonstration Program. Because most of the eligible laboratories are participating in the program, a Title 5 U.S.C. comparison group will be compiled from the Civilian Personnel Data File (CPDF). This comparison group will consist of workforce data from Governmentwide research organizations in civilian Federal agencies with missions and job series matching those in the DoD laboratories. This comparison group will be used primarily in the analysis of broadbanding costs and turnover rates.

The original ''China Lake'' project will serve as a second comparison group which can be used as a benchmark representing a stable broadbanding system. The two original Navy demonstration laboratories (Naval Air Warfare Center—Weapons Division in China Lake, CA and Naval Command Control and Ocean Surveillance Center in San Diego, CA) will participate in the employee survey and will also provide workforce data.

Given that some of the interventions are used only in selected laboratories, there will be additional comparison groups created for the specific interventions. The staggered implementation of the demonstration program across laboratories will also allow for time series analyses using multiple baselines. NRL is expected to implement its demonstration proposal in 1999 and will have several years of pre-demonstration baseline data.

*D. Method of Data Collection*

Data from several sources will be used in the evaluation. Information from existing management information systems and from personnel office records will be supplemented with perceptual survey data from S&T employees to assess the effectiveness and perception of the project. The multiple sources of data collection will provide a more complete picture as to how the interventions are working. The information gathered from one source will serve to validate information obtained through another source. In so doing, the confidence of overall findings will be strengthened as the different collection methods substantiate each other.

Both quantitative and qualitative data will be used when evaluating outcomes. The following data will be collected: (1) workforce data; (2) personnel office and other data on quality and timeliness; (3) employee attitude surveys; (4) a survey of HR officers on results orientation; (5) research ratings for scientists and engineers to be used in turnover analysis; (6) structured interviews and focus group data; (7) local site historian logs and implementation information; and (8) core results measures of laboratory performance.

The evaluation effort will consist of two phases, formative and summative evaluation, covering at least 5 years to permit inter-and intra-organizational estimates of effectiveness. The formative evaluation phase will include baseline data collection and analysis, implementation evaluation, and interim assessments. The formal reports and interim assessments will provide information on the accuracy of project operation, and current information on impact of the project on veterans and EEO groups, Merit System Principles, and Prohibited Personnel Practices. The summative evaluation will focus on an overall assessment of project outcomes after five years. The final report will provide information on how well the HR system changes achieved the desired goals, which interventions were most effective, and whether the results are generalizable to other Federal installations.

The external evaluation will be supplemented by an internal evaluation conducted by NRL (see Appendix H) to meet individual laboratory needs. Periodic reports and annual summaries will be prepared to document the findings. The summative evaluation will focus on an overall assessment of project outcomes after five years.

**IX. Demonstration Project Costs**

*A. Transition*

There will be no grades or steps in the broadband classification system as there are under the GS. NRL will provide GS employees with a permanent pay change that is equivalent to the proportion of the WGI earned at the time of implementation. For example, the employee 1 year past the last WGI in a 3-year waiting period would receive a permanent pay change equivalent to one third of the current value of the WGI. Employees will not be eligible for this basic pay increase if their current rating of record is unacceptable at the time of conversion. There will be no prorated payment for employees who are at step 10 or receiving a retained rate at the time of conversion into the demonstration project. This permanent pay increase will occur at the time the demonstration project is implemented.

The first official annual appraisal cycle under the CCS will be the 1998–1999 appraisal cycle, with the payout occurring the first full pay period in January 2000. Future CCS pay adjustments will be effective the beginning of the first full pay period in January each year.

*B. Cost Containment and Controls*

It is required that the demonstration project be ''relatively cost neutral.'' This is defined to mean that the NRL demonstration project will not increase the average personnel costs above what would have been expected under the previous 5 U.S.C. based system. Since NRL operates under the NWCF which requires cost efficiency so that NRL's technical programs can be marketed competitively, internal controls are in effect to ensure that costs are controlled.

NRL's Research Advisory Committee (RAC), comprising the CO, the DOR, the Chief Staff Officer, and the ADOR's will oversee the administration of the demonstration project. Because the RAC is the same management team that critically reviews the technical programs and the cost to operate NRL, the costs associated with this system will come under the same critical review. NRL is an innovative organization shaped by its mission and operating environment, and it exists in a highly dynamic and challenging climate. To be a vigorous and creative performer in such an environment, NRL must possess high quality personnel, challenging programs, and sound management practices. Broadbanding and CCS are designed to encourage the creative performer and to provide appropriate compensation. It does not automatically provide increases for

those who are already being paid commensurate with their contribution level.

NRL has established pay pool managers at the division level or equivalent. The CCS design includes a pay pool review panel responsible for evaluating the contribution scores for their pay pool and making adjustments, as required. The CCSDS will be designed to provide assistance to the pay pool manager in selecting the appropriate basic pay increase for an individual, based on that individual's contribution score. The CCSDS will contain controls on the amount of permanent and nonpermanent money available to the pay pool.

*C. Implementation Costs*

Costs associated with implementing the demonstration project are shown in Figure 13. These include automation of systems such as the CCSDS, training, and project evaluation. The automation and training costs are startup costs. Transition costs are one-time costs. Costs for project evaluation will be ongoing for at least 5 years.

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**Projected Implementation Costs**

| | FY98 | FY99 | FY00 | FY01 | FY 02 |
|---|---|---|---|---|---|
| Transition | $100K | $1.5M | | | |
| Training | $279K | $279K | | | |
| Automation | $862K | $450K | | | |
| Project Eval | $17K | $39.5K | $39.5K | $39.5K | $39.5K |
| Totals | $1.258M | $2.468M | $39.5K | $39.5K | $39.5K |

**Figure 13. Projected Implementation Costs**

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## X. Automation Support

*A. General*

One of the major goals of the demonstration project is to streamline the personnel processes to increase cost effectiveness. Automation must play an integral role in achieving that goal. Without the necessary automation to support the interventions proposed for the demonstration project, optimal cost benefit cannot be realized. In addition, adequate information to support decisionmaking must be available to managers if line management is to assume greater authority and responsibility for human resources management.

Automation to support the demonstration project is required at two distinct levels. At the DoN and DoD level, automation support [in the form of changes to the DCPDS] is required to facilitate processing and reporting of demonstration project personnel actions. At the NRL level, automation support (in the form of local processing applications) is required to facilitate management processes and decisionmaking.

*B. Defense Civilian Personnel Data System (DCPDS)*

Since DCPDS is a legacy system, efforts have been made to minimize changes to the system, and, therefore, the resources required to make the necessary changes. The following is a compendium of the proposed DCPDS modifications. The detailed specifications for required changes to DCPDS are provided in the System Change Request (SCR), Form 804.

*C. Core Document (COREDOC)*

The COREDOC application is a DoD system which will require modification to accommodate the interventions in this demonstration project. Specifically, there will be an RD that will replace the position description in the basic application; career tracks and career levels will replace GS grades; and a CCS Assessment Form that will replace performance elements.

*D. RIF Support System (RIFSS)*

The RIFSS is an automated tool used by human resources specialists to support RIF processing. Under the demonstration project, RIF rules will be modified to increase the credit for contributions and limit the rounds of competition. The AutoRIF application, developed by DoD, could be used if it were modified to accommodate these process changes.

*E. Contribution-based Compensation System Data System*

This automated system is required as an internal control and as a mechanism to equate contribution scores to appropriate rates of basic pay. This system will allow pay pool managers to develop a spreadsheet that will assist them in determining an appropriate merit increase or contribution award or both based on the overall contribution score for each individual. It will also be used as an internal control to ensure that the permanent and nonpermanent money allotted to each pay pool is not exceeded. It will further allow pay pool managers to visualize the effects of giving large basic pay increases or awards to high contributors, and the effects of withholding either the general or merit increase or both of those who are low contributors, or in the overcompensated range.

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**Appendix A: Required Waivers to Laws and Regulations**

| Title 5, United States Code | Title 5, Code of Federal Regulations |
|---|---|
| | Part 300, subpart F, sections 300.601 to 300.605 - Time-in-grade Restrictions.<br>Waive in entirety.<br><br>Part 315, subpart H, section 315.801(a) - Career and Career-conditional Employment, Probationary Period Information.<br>Waive to allow for the first three years to be the probationary period.<br><br>Part 315, subpart H, section 315.802 - Length of Probationary Period.<br>Waive to allow probationary period to be extended to three years. |
| Chapter 33, subchapter 1, section 3318(a) - Competitive Service; Selection from Certificate.<br>Waive. | Part 332, subpart D, section 332.404 - Order of Selection from Certificates.<br>Waive in entirety.<br><br>Part 335, subpart A, section 335.103(c)(I), (ii) - Agency Promotion Program.<br>Waive to allow temporary promotions and details to a higher level position of not more than one year to be effected without competition.<br><br>Part 335, subpart A, section 335.104 - Eligibility for Career Ladder Promotion.<br>Waive in entirety.<br><br>Part 337, subpart A, section 337.101(a) - Rating Applicants. Waive when 15 or fewer qualified candidates. |
| Chapter 33, subchapter III, section 3341(b) Details - Within Executive or Military Departments.<br>Waive in entirety. | |

**NAVAL RESEARCH LABORATORY**
**CONTRIBUTION-BASED COMPENSATION SYSTEM (CCS) SUMMARY**
**S&E Professional**

Employee_____ Pay Pool Code_____ Appraisal Period Ending_____
Title_____ Pay Plan/Series_____ Career Level_____
SSN_____ Supervisor_____

Most Recent OCS_____ Present Salary_____ Scores within NPR Equivalent to Present Salary _____

| CRITICAL ELEMENTS | *WEIGHT | SCORE | NET SCORE | RATING OF RECORD ACCEPTABLE OR UNACCEPTABLE |
|---|---|---|---|---|
| 1. Scientific and Technical Problem Solving | | | | |
| 2. R&D Business Management | | | | |
| 3. Cooperation and Supervision | | | | |

*If zero, element not applicable.

Basic Pay Increase %_____ Summary Rating A (Acceptable) or U (Unacceptable) _____
**Must be U if any critical element is rated U**

Contribution Award $_____

Hours_____ OVERALL CONTRIBUTION SCORE (Weighted Average)_____

**SUPPLEMENTAL CRITERIA (OPTIONAL): FOR EXAMPLE, SPECIFIC OBJECTIVES, STANDARDS, TASKINGS, AND/OR EXAMPLES:**

**REMARKS:**

| Signatures and Date | CCS PLAN | INTERIM REVIEW | APPRAISAL |
|---|---|---|---|
| Employee | | | |
| Supervisor | | | |

NOTE: Employee's signature under "CCS Plan" signifies that he or she has been given a copy of this form and has a copy of the Elements, Descriptors, Discriminators and Standards applicable to his or her career track.

| Title 5, United States Code | Title 5, Code of Federal Regulations |
|---|---|
| | Part 351, subpart G, section 351.701 - Assignment Involving Displacement.<br>(a) Waive to allow minimally successful or equivalent to be defined as an employee whose current CCS RIF Assessment Category score is 12 or better and does not have a current written notification of unacceptable performance.<br>(b) and (c) Assignment rights (bump and retreat). Waive to the extent that the distinction between bump and retreat is eliminated and to allow displacement to be limited to the employee's current career track and career level or, if there are no displacement rights in the employee's current career level, to any position previously held in the next lower career level regardless of career track. Preference eligibles may displace up to the equivalent of 3 grades or intervals below the highest equivalent grade of their current career level in the same or a different career track regardless of whether they previously held the position provided they are fully qualified for the position and the position is occupied by an employee with a lower retention standing, Preference eligibles with a compensable service connected disability of 30 percent or more may displace an additional 2 GS grades or intervals (total of 5 grades) below the highest equivalent grade of their current career level provided they previously held the position and the position is occupied by an employee in the same subgroup with a later RIF service computation date.<br>(d) Limitation. Waive.<br>(e)(1) Waive |

| Title 5, United States Code | Title 5, Code of Federal Regulations |
|---|---|
| | Part 430, subpart B, section 430.207(b) - Waive to the extent this section requires one or more progress reviews during each appraisal period.<br><br>Part 430, subpart B, section 430.210 - OPM Responsibilities. Waive in entirety. |
| Chapter 43, subchapter I, section 4303 - Actions Based on Unacceptable Performance. Waive to allow coverage of "reduction in pay level based on unacceptable performance". Waive to exclude from coverage (procedural and appeal rights) reductions in career level with no reduction in pay, when such actions result from regression of pay into a lower career level through reductions and denials of general increase ("slippage"). This exclusion will not apply to employees with veterans' preference.<br><br>Chapter 43, subchapter I, section 4303(f)(3) - Waive to allow exclusion of employees in the excepted service who have not completed a trial period, except those with veterans' preference.<br><br>Chapter 43, subchapter I, section 4304(b) (1) and (3) - Responsibilities of OPM. Waive in entirety. | Part 432, section 432.101 to 432.107 - Performance Reduction in Grade and Removal Actions.<br>Waive to allow coverage of "reduction in pay level based on unacceptable performance". Waive to exclude from coverage (procedural and appeal rights) reductions in career level with no reduction in pay, when such actions result from regression of pay into a lower career level through reductions and denials of general increase ("slippage"). This exclusion will not apply to employees with veterans' preference. |
| Chapter 45, subchapter I, section 4502(a) and (b) - Waive to permit NRL to approve awards up to $25,000 for individual employees. | Part 451, subpart A, section 451.103(c)(2) - Waive with respect to contribution awards under the NRL CCS.<br><br>Part 451, subpart A, sections 451.106(b) and 451.107(a) -Waive to permit NRL to approve awards up to $25,000 for individual employees. |

| Title 5, United States Code | Title 5, Code of Federal Regulations |
|---|---|
| Chapter 51, sections 5101 to 5113 - Classification.<br>Waive in entirety except section 5104 to the extent needed to permit classification of career levels and CCS descriptors into logically defined level groupings. | Part 511- Classification Under the GS.<br>Waive in entirety with an exception for appeal rights and time constraints under subpart F, sections 511.603, 604 and 605. |
| Chapter 53, subchapter I, section 5301 - Pay Policy.<br>Waive in entirety.<br><br>Chapter 53, subchapter 1, section 5302(8) and (9) - Pay Definition and section 5304 - Locality-Based Comparability Payments.<br>Waive to the extent necessary to allow demonstration project employees to be treated as GS employees and basic rates of pay under the demonstration project to be treated as scheduled rates of basic pay. Employees in Career Level V for the S&E Professional Track are to be treated as ST employees for the purposes of these provisions.<br><br>Chapter 53, subchapter I, section 5303 - Annual Adjustments to Pay Schedules.<br>Waive in entirety.<br><br>Chapter 53, subchapter I, section 5305 - Special Pay Authority.<br>Waive in entirety. | |

| Title 5, United States Code | Title 5, Code of Federal Regulations |
|---|---|
| Chapter 53, subchapter III, sections 5331 to 5336 - GS Pay Rates.<br>Waive in entirety. | Part 530, subpart C - Special Salary Rate Schedules.<br>Waive in entirety.<br><br>Part 531, subpart B - Determining Rate of Basic Pay.<br>Waive in entirety.<br><br>Part 531, subpart D - Within Grade Increases.<br>Waive in entirety.<br><br>Part 531, subpart E - Quality Step Increases.<br>Waive in entirety.<br><br>Part 531, subpart F - Locality-Based Comparability Payments.<br>Waive to the extent necessary to allow demonstration project employees to be treated as GS employees, employees in Career Level V of the S&E Professional Career Track to be treated as ST employees, and basic rates of pay under the demonstration project to be treated as scheduled annual rates of pay. |
| Chapter 53, subchapter VI, sections 5361 to 5366 - Grade and Pay Ketention.<br>Waive in entirety. | Part 536 - Grade and Pay Retention.<br>Waive in entirety. |
| Chapter 55, section 5455 (d) - Hazardous Duty Differential.<br>Waive to the extent necessary to allow demonstration project employees to be treated as GS employees. This waiver does not apply to emplyees in Career Level V of the S&E Professional Career Track. | Part 550, subpart G - Severance Pay.<br>Waive to the extent necessary to allow NRL to define reasonable offer.<br><br>Part 550, subpart I - Pay for Duty Involving Physical Hardship or Hazard. Waive to the extent necessary to allow demonstration project employees to be treated as GS employees. This waiver does not apply to employees in Career Level V of the S&E Professional Career Track. |

| Title 5, United States Code | Title 5, Code of Federal Regulations |
|---|---|
| Chapter 57, subchapter IV, section 5753 to 5755 - Recruitment and Relocation Bonuses, Retention Allowances, and Supervisory Differential. Waive to the extent necessary to allow (1) employees and positions under the demonstration project to be treated as employees and positions under the GS and (2) employees in Level V of the S&E Professional career track to be treated as ST employees for these purposes. | Part 575, subparts A, B, C and D - Recruitment and Relocation Bonuses, Retention Allowances, and Supervisory Differential. Waive to the extent necessary to allow (1) employees and positions under the demonstration project to be treated as employees and positions under the GS and (2) employees in Level V of the S&E Professional career track to be treated as ST employees for these purposes. |
| Chapter 59, subchapter III, section 5924 - Cost-of-living Allowances. Waive to the extent necessary to provide that COLA's paid to employees under the demonstration project are paid in accordance with regulations prescribed by the President (as delegated to OPM). | Part 591, subpart B - Cost-of-living Allowance and Post Differential - non-foreign areas. Waive to the extent necessary to allow demonstration project employees to be treated as GS employees and employees in Career Level V of the S&E Professional Career Track to be treated as ST employees. |
| Chapter 75, subchapter II, section 7511 (a)(1)(A)(ii) - Removal Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough.<br>Waive except for employees with veterans' preference to allow for a three-year probationary period.<br>7511(a)(1)(C)(ii) - Waive. | |

| Title 5, United States Code | Title 5, Code of Federal Regulations |
|---|---|
| Chapter 75, subchapter II, section 7512 - Adverse Actions.<br>Waive to replace "grade" with "career level"; provide that adverse action provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced; and exclude from coverage (procedural and appeal rights) reductions in career level with no reduction in pay, when such actions result from regression of pay into a lower career level through reductions or denials of general increase ("slippage"). This exclusion will not apply to employees with veterans' preference. | Part 752, subpart A - Adverse Actions. Waive to exclude from coverage (procedural and appeal rights) reductions in career level with no reduction in pay, when such actions result from regression of pay into a lower career level through reductions and denials of general increase ("slippage"). This exclusion will not apply to employees with veterans' preference.<br><br>Part 752, section 752.401 (a)(3) - Adverse Actions. Waive to replace "grade" with "career level".<br><br>Part 752, section 752.401 (a)(4) - Adverse Actions. Waive to provide that adverse action provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced. |

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**Appendix B: Definitions of Career Tracks and Career Levels**

*Career Track: S&E Professional*

Includes professional positions in S&E occupations such as physics, electronics engineering, chemistry, and student positions associated with these professions.

*Level I:* This includes student trainees. The education and employment must be part of a formal student employment program. Specific, clear, and detailed instructions and supervision are given to complement education. The level of education and experience completed is a major consideration in establishing the level of on-the-job training and work assignments.

*Level II:* This is the entry or developmental stage, preparing S&E's for the full and independent performance of their work. Performs supporting work in science or engineering requiring professional training but little experience. Conducts activities with objectives and priorities identified by supervisor or team leader; assistance given on new or unusual projects; completed work reviewed for technical soundness.

*Level III:* This is the advanced developmental, or typically, target career level, of this career track. Conceives and defines solutions to technical problems of moderate complexity; plans, analyzes, interprets, and reports findings of projects; guides technical and programmatic work of team members in comparable or junior grades; completed work and reports are reviewed to evaluate overall results.

*Level IV:* S&E's at this level are authorities within their professional areas or key program administrators. Conducts or directs technical activities or assists higher levels on challenging and innovative projects or technical program development with only general guidance on policy, resources and planning; develops solutions to complex problems requiring various disciplines; responsible for fulfilling program objectives.

*Level V:* ARSAE at this level are renowned experts in their fields. Independently defines and leads most challenging technical programs consistent with general guidance and/or independently directs overall R&D program managerial and/or supervisory aspects; conceives and develops elegant solutions to very difficult problems requiring highly specialized areas of technical expertise; recognized within DoD and other agencies for broad technical area expertise and has established professional reputation in technical community nationally and internationally. The primary requirement for Level V positions is the knowledge of and expertise in specific scientific and technology areas related to the mission of their organization. However, the ability to manage and/or supervise R&D operations or programs is also considered a necessity. May direct the work of an organizational unit; may be held accountable for the success of one or more specific programs or projects; monitors progress toward organizational goals and periodically evaluates and makes appropriate adjustments to such goals; supervises the work of employees; or otherwise exercises important policy-making, policy-determining, or other managerial functions.

*Career Track: S&E Technical*

Includes nonprofessional positions which support S&E activities through application of various skills in areas such as the following: engineering, computer, physical, chemical, biological, mathematical sciences; and student trainees.

*Level I:* This includes trainees who develop technical support knowledge gained through actual work experience. Performs repetitive tasks using knowledge of standardized procedures and operations. Receives specific, clear and detailed instruction and supervision. Completed work is reviewed for technical soundness.

*Level II:* Technicians at this entry level require a practical knowledge of standard procedures in a technical field. Skill in applying knowledge of basic principles, concepts and methodology of occupational and technical methods is required. Carries out prescribed procedures and relies heavily on precedent methods. Work is reviewed for technical adequacy and accuracy, and adherence to instructions.

*Level III:* This is the advanced developmental level of this career track, requiring extensive training or experience. Work requires some adapting of existing precedents or techniques. Receives outline of objectives desired and description of operating characteristics and theory involved. Completed assignments are reviewed for compliance with instructions,

adequacy, judgment, and satisfaction of requirements.

*Level IV:* Technicians at this level are considered to have professional level knowledge of a specific field and may serve as a member of a research team. Receives general guidance on overall objectives and resources. Conceives, recommends, and tests new techniques or methods. Completed work is reviewed for overall soundness and compliance with overall project objectives; results are usually accepted as authoritative.

*Level V:* Technicians at this level are experts within their technical area, or are key program administrators. Develop solutions to complex problems; responsible for fulfilling program objectives; and receive general guidance on policy, resources and planning. (This is a temporary career level, established for demonstration project transition purposes only. No new positions will be classified at this level.)

*Career Track: Administrative Specialist and Professional*

Professional and specialist positions in areas such as the following: safety and health, personnel, finance, budget, procurement, librarianship, legal, business, facilities management and student positions associated with these professions.

*Level I:* Includes student trainees. The education and employment must be part of a formal student employment program. Specific, clear, and detailed instructions and supervision are given to complement education. The level of education and experience completed is a major consideration in establishing the level of on-the-job training and work assignments.

*Level II:* This is the developmental stage preparing Administrative Specialists and Professionals for the full and independent performance of their work. Specific, clear and detailed instruction and supervision are given upon entry; recurring assignments are carried out independently. Situations not covered by instructions are referred to supervisor. Finished work is reviewed to ensure accuracy.

*Level III:* This is the advanced developmental, or typically, target level, of this career track. Employee plans and carries out assignments independently, resolving conflicts that arise, coordinates work with others and interprets policy on own initiative. Completed work is reviewed for feasibility, compatibility with other work or effectiveness in meeting requirements or expected results.

*Level IV:* At this level, Administrative Specialists and Professionals are authorities within their professional areas or key program administrators or supervisors. They conduct or direct activities in an administrative and professional area with only general guidance on policy, resources and planning; develop solutions to complex problems requiring various disciplines; and are responsible for fulfilling program objectives.

*Level V:* Administrative Specialists and Professionals at this level are experts within their broad administrative area or professional field who serve as leaders, heads of branches or divisions, or key program administrators. Receives general guidance on policy, resources and planning having an affect on public policies or programs; responsible for fulfilling program objectives. Results are authoritative and affect administrative programs or the well-being of substantial numbers of people.

*Career Track: Administrative Support*

Includes clerical, secretarial and assistant work in nonscientific and engineering occupations.

*Level I:* This includes student trainees as well as advanced entry level which requires a fundamental knowledge of a clerical or administrative field. Developmental assignments may be given which lead to duties at a higher group level. Performs repetitive tasks, specific, clear and detailed instruction and supervision; with more experience utilizes knowledge of standardized procedures and operations, assistance is given on new or unusual projects. Completed work is reviewed for technical soundness.

*Level II:* This level requires a knowledge of standardized rules, procedures or operations requiring considerable training. General guidance is received on overall objectives and resources. Completed assignments may be reviewed for overall soundness or meeting expected results.

*Level III:* This is the senior level which requires knowledge of extensive procedures and operations requiring extensive training. Receives general guidance on overall resources and objectives. Skilled in applying knowledge of basic principles, concepts, and methodology of profession or administrative occupation and technical methods. Results are accepted as authoritative and are normally accepted without significant change.

**Appendix C: Table of Occupational Series Within Career Tracks**

**Note:** As new series are needed or current ones are discontinued, this table will be updated.

*S&E Professional*—Includes all scientist and engineer work.

0101—Social Science Series
0180—Psychology Series
0401—General Biological Science Series
0403—Microbiology Series
0801—General Engineering Series
0804—Fire Protection Engineering Series
0806—Materials Engineering Series
0808—Architecture Series
0810—Civil Engineering Series
0819—Environmental Engineering Series
0830—Mechanical Engineering Series
0840—Nuclear Engineering Series
0850—Electrical Engineering Series
0854—Computer Engineering Series
0855—Electronics Engineering Series
0861—Aerospace Engineering Series
0892—Ceramic Engineering Series
0893—Chemical Engineering Series
0899—Engineering and Architecture Student Trainee Series
1301—General Physical Science Series
1306—Health Physics Series
1310—Physics Series
1313—Geophysics Series
1320—Chemistry Series
1321—Metallurgy Series
1330—Astronomy and Space Science Series
1340—Meteorology Series
1350—Geology Series
1360—Oceanography Series
1370—Cartography Series
1399—Physical Science Student Trainee Series
1515—Operations Research Series
1520—Mathematics Series
1550—Computer Science Series
1599—Mathematics and Statistics Student Trainee Series

*S&E Technical*—Includes S&E technical support work typically requiring specialized training in the particular discipline.

0802—Engineering Technician Series
0809—Construction Control Series
0818—Engineering Drafting Series
0856—Electronics Technician Series
0895—Industrial Engineering Technician Series
1152—Production Control Series
1311—Physical Science Technician Series
1371—Cartographic Technician Series
1521—Mathematics Technician Series

*Administrative Specialist and Professional*—Includes analyst, specialist, and professional work in nonscientific and engineering occupations.

0018—Safety and Occupational Health Management Series
0028—Environmental Protection Specialist Series
0080—Security Administration Series
0170—History Series
0201—Personnel Management Series
0212—Personnel Staffing Series
0221—Position Classification Series
0230—Employee Relations Series
0233—Labor Relations Series
0235—Employee Development Series
0260—Equal Employment Opportunity Series
0299—Personnel Management Student Trainee Series
0301—Miscellaneous Administration and Program Series
0334—Computer Specialist Series
0340—Program Management Series
0341—Administrative Officer Series
0342—Support Services Administration Series
0343—Management and Program Analysis Series
0391—Telecommunications Processing Series
0505—Financial Management Series
0510—Accounting Series
0560—Budget Analyst Series
0690—Industrial Hygiene Series
0904—Law Clerk Series
0905—General Attorney Series
0950—Paralegal Specialist Series
1001—General Arts and Information Series
1020—Illustrating Series
1035—Public Affairs Series
1060—Photography Series
1071—Audiovisual Production Series
1082—Writing and Editing Series
1083—Technical Writer and Editing Series
1084—Visual Information Series
1101—General Business and Industry Series
1102—Contracting Series
1104—Property Disposal Series

1176—Building Management Series
1199—Business and Industry Student Trainee Series
1222—Patent Attorney Series
1410—Librarian Series
1412—Technical Information Series
1420—Archivist Series
1601—General Facilities and Equipment Series
1640—Facility Management Series
1670—Equipment Specialist Series
1801—General Inspection, Investigation, and Compliance Series
1910—Quality Assurance Series
2001—General Supply Series
2003—Supply Program Management Series
2030—Distribution Facilities and Storage Management Series
2130—Traffic Management Series

*Administrative Support*—Includes clerical, secretarial and assistant work in nonscientific and engineering occupations.

0019—Safety Technician Series
0086—Security Clerical and Assistance Series
0181—Psychology Aid and Technician Series
0203—Personnel Clerical and Assistance Series
0302—Messenger Series
0303—Miscellaneous Clerk and Assistance Series
0305—Mail and File Series
0312—Clerk-Stenographer and Reporter Series
0318—Secretary Series
0322—Clerk-Typist Series
0326—Office Automation Clerical and Assistance Series
0332—Computer Operation Series
0335—Computer Clerk and Assistant Series
0344—Management and Program Clerical and Assistance Series
0351—Printing Clerical Series
0361—Equal Opportunity Assistance Series
0390—Telecommunications Processing Series
0394—Communications Clerical Series
0399—Administration and Office Support Student Trainee Series
0503—Financial Clerical and Assistance Series
0525—Accounting Technician Series
0540—Voucher Examining Series
0544—Civilian Pay Series
0561—Budget Clerical and Assistance Series
0986—Legal Clerical and Assistance Series
1001—General Arts and Information Series
1087—Editorial Assistance Series
1105—Purchasing Series
1106—Procurement Clerical and Technician Series
1107—Property Disposal Clerical and Technician Series
1411—Library Technician Series
2005—Supply Clerical and Technician Series
2102—Transportation Clerk and Assistant Series
2131—Freight Rate Series

**Appendix D: Classification and CCS Elements**

Part I. S&E Professionals
Part II. Administrative Specialist and Professional
Part III. Adminstrative Support
Part IV. S&E Technical

The CCS Summary Forms shown in this appendix are draft forms intended to provide an understanding of what the forms will cover. Under the demonstration project, the forms will be generated by the CCSDS. They may be changed during the project to require additional information, to make them easier to use, or for other reasons.

The contents of the CCS elements, descriptors, discriminators and basic acceptable standards may similarly be changed during the life of the demonstration project.

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**NAVAL RESEARCH LABORATORY**
**CONTRIBUTION-BASED COMPENSATION SYSTEM (CCS) SUMMARY**
**S&E Professional**

Employee_____ Pay Pool Code_____ Appraisal Period Ending_____

Title_____ Pay Plan/Series_____ Career Level_____

SSN_____ Supervisor_____

Most Recent OCS_____ Present Salary_____ Scores within NPR Equivalent to Present Salary _____

| CRITICAL ELEMENTS | *WEIGHT | SCORE | NET SCORE | RATING OF RECORD ACCEPTABLE OR UNACCEPTABLE |
|---|---|---|---|---|
| 1. Scientific and Technical Problem Solving | _____ | _____ | _____ | _____ |
| 2. R&D Business Management | _____ | _____ | _____ | _____ |
| 3. Cooperation and Supervision | _____ | _____ | _____ | _____ |

*If zero, element not applicable.

Basic Pay Increase %_____ Summary Rating A (Acceptable) or U (Unacceptable) _____
**Must be U if any critical element is rated U**

Contribution Award $_____

Hours_____ OVERALL CONTRIBUTION SCORE (Weighted Average)_____

**SUPPLEMENTAL CRITERIA (OPTIONAL): FOR EXAMPLE, SPECIFIC OBJECTIVES, STANDARDS, TASKINGS, AND/OR EXAMPLES:**

**REMARKS:**

| Signatures and Date | CCS PLAN | INTERIM REVIEW | APPRAISAL |
|---|---|---|---|
| **Employee** | | | |
| **Supervisor** | | | |

NOTE: Employee's signature under "CCS Plan" signifies that he or she has been given a copy of this form and has a copy of the Elements, Descriptors, Discriminators and Standards applicable to his or her career track.

## ELEMENT 1. SCIENTIFIC AND TECHNICAL PROBLEM SOLVING

Instructions: Assign a value (0 - 89) which best represents employee's contributions in the overall element. Descriptors define contributions at high end of each level.

| | | Discriminators | | | | Descriptors |
|---|---|---|---|---|---|---|
| Level | Point Range | Scope of Project and Level of Oversight | Scientific and Technical Complexity and Creativity | Scientific and Technical Communications and Reporting | Impact and Recognition | |
| I (Student) | 0 - 21 | Performs tasks specifically assigned by researcher under close supervision; resolves recurring problems independently. | Performs tasks which are non-complex or include detailed instructions, requiring limited knowledge of subject matter. | Writes in-house documents to convey information about his or her tasks or for similar purposes as assigned. | Recognized by personnel in own unit for providing high quality support and increasing subject matter knowledge. | |
| II | 18 - 47 | Conducts in-house technical activities and/or may provide contract technical direction with guidance from supervisor or higher-level scientist or engineer. | Works closely with peers in collectively solving problems of moderate complexity, involving limited variables, precedents established in related projects, and minor adaptations to well-established methods and techniques. | Provides data and written analysis for input to scientific papers, journal articles and reports and/or assists in preparing contractual documents or reviews technical reports. Presents technical results of own work orally or in writing, within own organization or to limited external contacts. Work acknowledged in team publications. | Recognized within own organization for technical ability in assigned areas. | |
| III | 44 - 66 | Conducts in-house technical activities or provides contract technical direction on projects and programs where the problem must typically be approached through a series of complete and conceptually related studies. Work requires minimal oversight. | Conceives and defines solutions to technical problems which are typically difficult to define, require unconventional or novel approaches, require application of engineering and/ or scientific principles in significant areas or research or development for which no closely related precedents exist, and/or present other features of more than average difficulty. | Writes or is major contributing author on scientific papers, journal articles or reports and/or prepares contract documents and reviews reports pertaining to area of technical expertise **OR** contributes inventions, new designs or techniques which are of material significance in the solution of problems. Prepares and presents own and/or team technical results, orally or in writing, to varied laboratory, scientific, industry and other government audiences. | Recognized internally and externally by peers, both in governmental and industrial activities, for technical expertise. Is sought out by colleagues who are themselves professionally mature scientists and engineers. | |
| IV | 66- 80 | Independently defines, leads and manages highly challenging and innovative technical activities consistent with general guidance, or independently directs overall R&D program. Interpretations made are accepted as technically authoritative. | Formulates and guides solutions to very difficult problems in advancing technology and research. Problems resolved have been recognized as critical obstacles to progress or development in areas of exceptional interest. | Lead or sole author on scientific papers, journal articles, or review articles documenting major advances and resolutions in the technical area, some of which had a major impact on advancing the field or are accepted as definitive of important areas, **and/or** has contributed inventions, new designs or techniques which are regarded as major advances in basic or applied research, and have opened the way for extensive new developments or solved problems of great importance to the scientific field, agency or public; **and/or** reviews, approves and ensures overall quality of reporting of all technical products of mission area. Prepares and delivers invited or contributed presentations and papers at national and international conferences on technical area; or gives policy-level briefings. | Recognized within the laboratory, DoD and other agencies in broad, or narrow but intensely specialized, technical area; contributions are of such importance and magnitude they serve to move the state of the art forward so that other colleagues must take notice to keep abreast of development in the field; has established professional reputation in the technical and scientific community. | |
| V | 81 - 89 | Leads broad-scale attack in frontier areas of research which will lead to major modification or important extension of current theory. Leadership influences shaping of agency program goals, advancement of programs and understanding in the total field, and planned activities of numerous scientists in government, academia and private industry. | Areas of research are so complex they must be subdivided into areas at least some of which have a major impact on advancing the field or are accepted as definitive of important areas of the field. Develops new hypotheses, concepts and techniques which are required before substantial progress can be made on areas of extraordinary difficulty. | Scientific articles are published in the most prestigious journals, introduce new research which significantly enhances knowledge in the technical area, and are of such high quality that they set standards for the scientific community. Serves as a senior reviewer and editor of technical literature produced in his/her area of expertise. Prepares and delivers invited or contributed presentations and papers in national and international forums, representing the scientific community as leading expert in his or her field. | Recognized as a leader and authority in an area of wide-spread scientific interest or applied problems of great importance. Sought by members of the national and international scientific community as advisor and consultant in his or her field. | |

**ACCEPTABLE PERFORMANCE STANDARDS.** With minor exceptions, work is performed in a timely, efficient, and cooperative manner; and work products demonstrate thorough research, completion of established objectives for the assignment, adherence to instructions and guidance of supervisor and team leader, and overall high quality as deemed by supervisor or appropriate peer group.

SPECIFIC OBJECTIVES, TASKINGS, STANDARDS, AND/OR EXAMPLES MAY BE COMMUNICATED TO EMPLOYEES USING THE CCS FORM OR OTHER APPROPRIATE MEANS

## ELEMENT 2. R&D BUSINESS MANAGEMENT

Instructions: Assign a value (0 - 89) which best represents employee's contributions in the overall element. Descriptors define contributions at high end of each level.

| | | Discriminators | | | DESCRIPTORS |
|---|---|---|---|---|---|
| Level | Point Range | Corporate Resource Management (Time and Money) | R&D Business Development | Technology Transition and Transfer | |
| I (Student) | 0 - 21 | Uses personal and assigned resources efficiently; deviations from the usual are referred to supervisor or other appropriate personnel. | Provides, obtains, or clarifies pre-defined or non-complex information to and 'from customers as assigned. | Not applicable. | |
| II | 18 - 47 | Manages elements of in-house work units or assists in managing a scientific or support contract. Aware of and makes appropriate use of available resources. Uses personal and assigned resources efficiently under guidance of supervisor or team leader. | As a team member, communicates with customers to understand customer requirements. Stays current in areas of expertise and contributes to new program development. Collects information or provides other technical assistance to proposal marketing activities. | Participates as a team member in demonstrating technology to customers. Contributes technically to development of technology that is transitioned. With guidance, contributes to technical content of partnerships for technology transition and/or transfer (ATD's, MOU's, JDL and Reliance, CRADA's and other dual-use vehicles). Seeks out and uses relevant outside technologies in assigned projects. | |
| III | 44 - 66 | Manages technically complex in-house work units or one or more contractual efforts in assigned program area. Plans and controls all assigned resources; makes effective use of facilities to optimize operations; exploits fallout money. Participates in strategic planning at team level, taking cognizance of complementary projects elsewhere to ensure optimal use of resources. | Initiates interactions with customers to understand customer needs. Generates key ideas for program development based on such understanding and knowledge of technical area. Pursues near term business opportunities through proposal preparation. | Develops and presents demonstrations of technology to customers. As a team member, implements partnerships for technology transition and/or transfer (ATD's, MOU's, JDL and Reliance, CRADA's and other dual-use vehicles). Evaluates and incorporates appropriate outside technology in individual or team activities. | |
| IV | 66 - 80 | Defines technology area strategy and resource allocations for in-house and contractual programs. For multiple technical areas, conducts overall program planning and coordination and/or program documentation (master plans, roadmaps, Joint Director of Lab/Reliance, etc.). Advocates to higher headquarters on budgetary and programmatic issues for resources. Leads strategic planning and prioritization. Develops strategy to leverage resources from other agencies. | Works at senior level to stimulate development of customer alliances for several research and/or development areas. Generates strategic research objectives and/or business plans for core technical areas. Recognizes warfighting trends, relates business opportunities and convinces lab management to develop and acquire expertise and commit funds. Ensures overall proposal quality. | Organizes, leads and markets overall technology transition and transfer activities for organization at senior executive and command levels. Leads in formulation and oversight of ATD's, MOU's, JDL and Reliance, CRADA's and other dual-use vehicles. Creates an environment that encourages widespread exploitation of both national and international technologies. | |
| V | 81 - 89 | Serves as an advisor to NRL ,ONR, DoN, and DoD on issues of resource management related to his or her area of research, including effective use of equipment, facilities, and scientific talent both within and outside NRL. | NRL's opportunities for new business are substantially enhanced by his or her established reputation and on-going professional activities (participation in professional societies, scientific collaborations). Personal stature is a major consideration in agency sponsorship of programs in his or her field. | Because of his or her professional relationships and exceptional knowledge, discerns opportunities for research which will lead to technology transition and transfer and encourages NRL to focus in such areas. | |

**ACCEPTABLE PERFORMANCE STANDARDS.** With minor exceptions, makes and/or meets time and budget estimates on assigned projects or takes appropriate corrective action; communications are logical, clear, complete and appropriately influence the decision process; decisions and strategies contribute to the appropriate outcome of business dealings; and work products demonstrate thorough research, completion of established objectives, adherence to instructions and guidance of supervisor and team leader, and overall high quality as deemed by supervisor or appropriate peer group.

SPECIFIC OBJECTIVES, TASKINGS, STANDARDS, AND/OR EXAMPLES MAY BE COMMUNICATED TO EMPLOYEES USING THE CCS FORM OR OTHER APPROPRIATE MEANS

## ELEMENT 3. COOPERATION AND SUPERVISION

Instructions: Assign a value (0 - 89) which best represents employee's contributions in the overall element. Descriptors define contributions at high end of each level.

| | | Discriminators | | DESCRIPTORS |
|---|---|---|---|---|
| Level | Point Range | Team Role and Breadth of Influence | Supervision and Subordinate Development (consider only if employee is a supervisor) | |
| I (Student) | 0 - 21 | Provides assistance to team members consistent with his or her level of education and experience. | Not applicable. | |
| II | 18 - 47 | Contributes as a technical researcher or team member to all aspects of team's responsibilities. May technically guide or mentor technician and/or less experienced and more junior level personnel. | Not applicable. | |
| III | 44 - 66 | Contributes in a major team role either as a senior scientist and technician or as a task or team leader. Is sought for consultation by peers and mentors team members. If a team leader, guides team to ensure that project goals and charters are adhered to through team effort. | Carries out full range of supervisory duties with respect to lower level staff, including one or more subordinate professionals. Identifies and resolves developmental needs and problems, completes appropriate administrative actions, complies with EEO and Safety and other regulations and policies. Develops and maintains resources and processes which enhance ability of subordinates to effectively carry out their duties. | |
| IV | 66 - 80 | Manages all aspects of personnel, teams and/or branches with accountability for mission and programmatic success. Selects research team leaders and establishes team charters. Provides technical expertise and leadership to subordinate team leaders. Ensures that various teams work as cohesive units to achieve the respective charter and goals. | Plans, directs and timely executes R&D programs and problems of such difficulty, scope, and complexity that they must be subdivided into separate areas or phases and carried out through subordinate organizational units. Manages policy changes, organizational changes, and changes to structure and content of program(s) directed. Requires substantial coordination and integration of major work assignments, projects, or program segments; exercises final technical authority over the work directed. Carries out full range of supervisory duties with respect to subordinates: Identifies and resolves developmental needs and problems, completes appropriate administrative actions, complies with EEO and Safety and other regulations and policies. Provides leadership in developing, implementing, evaluating, and improving processes and procedures for enhancing performance of subordinates. Hires staff and develops future team leaders and supervisors. | |
| V | 81 - 89 | Plays a major role in team efforts as team's scientific and technical advisor and mentor. Provides high-level scientific and/or technical information and guidance in his/her area of expertise. Suggests, influences and directs the R&D efforts of such teams. Serves as a recruiting attraction for recent graduates who seek opportunities to work under his or her inspiration and guidance in order to catch some of his or her imaginative fire, critical judgment, and research technique. | Provides consultation and leadership in highly specialized areas. Provides input on research and development teams outside NRL. Leads own research team consisting of scientific and engineering personnel. Serves as an example; mentors and encourages junior scientists. | |

**ACCEPTABLE PERFORMANCE STANDARDS.** With minor exceptions, carries out duties in a professional and responsive manner; personal interactions foster cooperation and teamwork; **and, if employee is a supervisor,** treatment of subordinates is based on merit and fitness considerations, is consistent with law/rules/regulations/policies, is judged fair and equitable by superiors, and fosters commitment/cooperation/teamwork amongst subordinates.

SPECIFIC OBJECTIVES, TASKINGS, STANDARDS, AND/OR EXAMPLES MAY BE COMMUNICATED TO EMPLOYEES USING THE CCS FORM OR OTHER APPROPRIATE MEANS

**NAVAL RESEARCH LABORATORY**
**CONTRIBUTION-BASED COMPENSATION SYSTEM (CCS) SUMMARY**
**Administrative Specialist and Professional**

Employee_____ Pay Pool Code_____ Appraisal Period Ending_____

Title_____ Pay Plan and Series_____ Career Level_____

SSN_____ Supervisor_____

Most Recent OCS_____ Present Salary_____ Scores within NPR Equivalent to Present Salary _____

| CRITICAL ELEMENTS | *WEIGHT | SCORE | NET SCORE | RATING OF RECORD ACCEPTABLE OR UNACCEPTABLE |
|---|---|---|---|---|
| 1. Problem Solving and Program Management | _____ | _____ | _____ | _____ |
| 2. Cooperation and Customer Relations | _____ | _____ | _____ | _____ |
| 3. Supervision and Resources Management (Supervisory Personnel Only) | _____ | _____ | _____ | _____ |

*If zero, element not applicable.

Basic Pay Increase %_____

Contribution Award $_____

Hours _____

Summary Rating A (Acceptable) or U (Unacceptable) _____
**Must be U if any critical element is rated U**

OVERALL CONTRIBUTION SCORE (Weighted Average) _____

**SUPPLEMENTAL CRITERIA (OPTIONAL): FOR EXAMPLE, SPECIFIC OBJECTIVES, STANDARDS, TASKINGS, AND/OR EXAMPLES:**

**REMARKS:**

| Signatures and Dates | CCS PLAN | INTERIM REVIEW | APPRAISAL |
|---|---|---|---|
| **Employee** | | | |
| **Supervisor** | | | |

NOTE: Employee's signature under "CCS Plan" signifies that he or she has been given a copy of this form and has a copy of the Elements, Descriptors, Discriminator, and Standards applicable to his or her career track.

## ELEMENT 1: PROBLEM SOLVING AND PROGRAM MANAGEMENT

Instructions: Assign a value (0 - 80) which best represents employee's contributions in the overall element. Descriptors define contributions at high end of each level.

| | | Discriminators | | | DESCRIPTORS |
|---|---|---|---|---|---|
| Level | Point Range | Complexity/Scope | Applicability of Guidelines | Level of Oversight | |
| I (Student) | 0 | Applies standardized rules, procedures, and operations in an administrative or technical program area to resolve standard or recurring problems. | Locates and selects the most appropriate guidelines and procedures from established sources; makes minor deviations applicable to specific cases. | Independently carries out assigned work following supervisor's direction. | |
| II | 18 - 47 | Applies knowledge of an administrative or technical program area to analyze and resolve problems which are difficult but for which there are established patterns and methods for solution. Includes refinement of methods or development of new ones. | Uses judgment in selecting, interpreting and adapting guidelines which are available but not completely applicable, or which have gaps in specificity. | Independently plans and carries out work, based on guidelines and precedents and supervisor's definition of objectives, priorities and deadlines. Completed work is evaluated for technical soundness, appropriateness, and conformity to policy and requirements. | |
| III | 44 - 59 | Applies substantial expertise in an administrative or technical program area to analyze and resolve the most highly complex, controversial, sensitive issues, and/or problems; and where applicable to administer one or more complex programs within a functional area. Substantially modifies or adapts standard and traditional methods and approaches to address unusual circumstances and highly complex issues and to develop new methods, criteria, policies or precedents that have NRL-wide impact. | Uses initiative and resourcefulness in interpreting and applying administrative or technical policies, precedents and guidelines which are applicable but are scarce, conflicting, of limited use, or stated only in general terms. Uses considerable judgment and originality in developing innovative approaches to define and resolve highly complex situations. | Consults with supervisor to develop deadlines, priorities and overall objectives. Independently plans and carries out work. Complex issues are resolved without reference to supervisor, except for matters of a policy nature. Completed work reviewed only from an overall standpoint in terms of feasibility, compatibility with other work, and overall effectiveness in meeting requirements or expected results. | |
| IV | 59 - 66 | Performs varied duties requiring many different and unrelated processes and methods applied to a broad range of activities or substantial depth of analysis for an administrative or professional field. Uses judgment and ingenuity in making decisions in major areas of uncertainty in methodology, interpretation and/or evaluation resulting from such things as continuing changes in program, unknown phenomena or conflicting requirements. Must isolate and define unknown conditions, resolving critical problems, or develop new theories for work products or services which affect the work of other experts, development of major aspects of administrative programs or missions, or the well being of substantial numbers of people. | Uses guidelines which require interpretation and are of limited use. Uses initiative and resourcefulness in interpreting guidelines, in deviating from traditional methods or researching trends and patterns to develop new methods, criteria or proposed new policies. | Supervisor outlines overall objectives. Employee then independently plans and carries out the work. Complex issues are resolved without reference to supervisor except for matters of a policy nature. Results of work are considered technically authoritative and are normally accepted without significant changes. | |
| V | 66 - 80 | Defines, leads and manages an overall administrative or technical program area which includes a range of complex functional areas. Makes or recommends decisions which significantly change, interpret or develop important agency policies and programs. | Guidelines are broadly stated and non-specific. Applies considerable judgment and ingenuity in interpreting guidelines that do exist and in developing applications to broadly based projects and programs. | Independently plans, designs and carries out programs, projects, studies, etc., such that overall program objectives are met. Supervisor provides only broadly defined missions and functions. Results of work are considered technically authoritative and are normally accepted without significant changes. | |

**ACCEPTABLE PERFORMANCE STANDARDS.** With minor exceptions, work is performed in a timely, efficient, and cooperative manner; and work products demonstrate thorough research, completion of established objectives for the assignment, adherence to instructions and guidance of supervisor/team leader, and acceptable quality as deemed by supervisor.

SPECIFIC OBJECTIVES, TASKINGS, STANDARDS, AND/OR EXAMPLES MAY BE COMMUNICATED TO EMPLOYEES USING THE CCS FORM OR OTHER APPROPRIATE MEANS

## ELEMENT 2: COOPERATION AND CUSTOMER RELATIONS

Instructions: Assign a value (0 - 80) which best represents employee's contributions in the overall element. Descriptors define contributions at high end of each level.

| | | Discriminators | | | |
|---|---|---|---|---|---|
| Level | Point Range | Cooperation | Level and Purpose of Customer Interactions | Effectiveness in Developing, Executing, and Marketing Customer-Oriented Support Services | DESCRIPTORS |
| I (Student) | 0 | Develops and maintains successful working relationships with others inside and outside own organization to effectively carry out assigned work. | Interacts with customers to carry out requests within area of responsibility; refers deviations or non-recurring problems to appropriate personnel. | Carries out services in a manner which fosters customer satisfaction and confidence in employee's organization. | |
| II | 18 - 47 | Develops/maintains successful working relationships with others inside and outside own organization to work out problems between own group and others, coordinate joint actions, and gain understanding of other areas sufficient to make appropriate recommendations to customers. | Interacts with customers to understand customer needs, communicate information and coordinate actions; independently carries out actions or delegates/refers to appropriate personnel. | Contributes ideas for improvement of established services based on knowledge of a variety of administrative or technical programs, systems, or equipment, and an understanding of customer needs. | |
| III | 44 - 59 | Seeks and fosters successful working relationships with others inside and outside own organization to coordinate highly complex, controversial, sensitive situations, work out problems or improve processes of own group or between own group and others, and gain understanding of other areas sufficient to effectively carry out integrated advisory and program work. Leads, mentors, and provides technical oversight to specialists at same or lower level. Regularly consulted by branch/division head and other journey-level specialists on highly complex issues due to depth and breadth of expertise and cooperative manner. | Works jointly with customers to define highly complex or controversial problems or program needs; and to develop and carry out unique strategies, techniques or criteria for resolving problems and meeting needs. | Generates key ideas and/or strategies for development/implementation/marketing of new and improved programs or services applicable to a specific administrative or technical functional area serving Lab-wide customers, or to a range of programs serving customers at division-wide level. OR effectively carries out and maintains such programs and services at a high level of customer awareness and satisfaction. | |
| IV | 59 - 66 | Seeks and fosters successful working relationship with others inside and outside own organization to coordinate highly complex and controversial and sensitive situations, work out problems or improve processes of own group or between own group and others, and gain understanding of other areas sufficient to effectively carry out integrated advisory and program work. Leads, mentors, and provides technical oversight to specialists at same or lower level. Regularly consulted by branch and division head and others on highly complex issues due to depth and breadth of expertise and cooperative manner. | Works jointly with customers to define highly complex or controversial problems or program needs; develops and carry out unique strategies, techniques or criteria for resolving problems and meeting needs of customers both inside and outside the organization. | Generates key ideas and/or strategies for development and implementation and marketing of highly complex new and improved programs or services which affect a broad administrative or professional program or technical functional area serving NRL-wide customers; or to a highly complex programs serving customers division-wide; OR effectively carries out and maintains such programs and services at a high level of customer awareness and satisfaction. | |
| V | 66 - 80 | Fosters successful working relationships with high-level officials both inside and outside NRL, thereby enhancing NRL's ability to meet organizational goals. Seeks and builds coalitions with other support organizations to establish integrated approaches to meeting NRL's needs. Sets and maintains, throughout own organization, a tone of cooperation, cohesion and teamwork. | Works at senior executive level to understand political, fiscal and other factors affecting customer and program needs; to develop and establish concepts, theories, or programs to meet service needs or resolve unyielding problems. Negotiates and resolves conflicts among senior managers regarding activity-wide policy decisions. | Generates strategic objectives and plans for development, implementation, and marketing of broadly-based programs and services to meet Lab-wide needs. Ensures overall effectiveness and customer-oriented focus of division programs and services. | |

**ACCEPTABLE PERFORMANCE STANDARDS**. With minor exceptions, personal interactions foster cooperation and teamwork, and enhance the ability of self and organization to effectively serve customers; timely, accurate and acceptable quality service is provided to customers; and customer interactions demonstrate appropriate knowledge for level of interaction required by the position.

SPECIFIC OBJECTIVES, TASKINGS, STANDARDS, AND/OR EXAMPLES MAY BE COMMUNICATED TO EMPLOYEES USING THE CCS FORM OR OTHER APPROPRIATE MEANS

## ELEMENT 3: SUPERVISION AND RESOURCES MANAGEMENT

Instructions: Assign a value (0 - 80) which best represents employee's contributions in the overall element. Descriptors define contributions at high end of each level.

| | | Discriminators | | |
|---|---|---|---|---|
| Level | Point Range | Resources Management: Size and Complexity of Area of Responsibility; Level of Efficiency, Creativity and Initiative | Supervision and Subordinate Development (consider only if employee is a supervisor) | DESCRIPTORS |
| I (Student) | 0 | Uses personal and assigned resources efficiently under guidance of supervisor. Contributes ideas for streamlining procedures or for more efficiently using office and program resources. | Not applicable. | |
| II | 18 - 47 | Generates and implements ideas for effectively streamlining handling of moderately complex projects and programs which are difficult but for which there are established guidelines, patterns or methods for solution. This streamlining results in savings of time, money, and administrative burden for organization or customer; **AND/OR** maintains an organization/program already so streamlined. | Carries out full range of supervisory duties with respect to support personnel (technicians, assistants or clerks). Identifies and resolves developmental needs and problems, completes necessary administrative actions, complies with EEO and Safety and other regulations and policies. Develops and maintains resources and processes which enhance ability of subordinates to effectively carry out their duties. | |
| III | 44 - 59 | Generates and implements ideas for effectively streamlining handling of complex projects and problems, or programs involving analysis and resolution of highly complex or controversial issues, problems, or programs involving subordinates, which result in savings of time, money, and administrative burden for organization or customer; **AND/OR** maintains an organization/program already so streamlined. | Carries out full range of supervisory duties with respect to lower level staff including one or more subordinate professionals. Identifies and resolves developmental needs and problems, completes appropriate administrative actions, complies with EEO and Safety and other regulations and policies. Develops and maintains resources and processes which enhance ability of subordinates to effectively carry out their duties. | |
| IV | 59 - 66 | Generate and implements ideas for effectively streamlining handling of highly complex and controversial and sensitive programs and projects. Work involves analysis and resolution of highly complex or controversial issues/problems involving subordinates, which result in savings of time, money, and administrative burden for organization or customer; AND/OR maintains an organization and program already so organized or streamlined. | Carries out full range of supervisory duties with respect to lower level staff including one or more subordinate professionals. Identifies and resolves developmental needs and problems, completes appropriate administrative actions, complies with EEO and Safety and other regulations and policies. Develops and maintains resources and processes which enhance ability of subordinates to effectively carry out their duties. | |
| V | 66 - 80 | Manages human, material, and financial resources of a division (or organization of comparable size, diversity and complexity) encompassing a range of complex functional areas. Defines resource allocations required for in-house and contractual programs. Advocates to Lab and/or higher headquarters for resources. Generates and implements creative ideas for increasing overall efficiency of organization. | Oversees the overall planning, direction, and timely execution of an administrative program, including development, assignment, and higher level clearance of goals and objectives for supervisors of subordinate units. Manages policy and organizational changes, and changes to the structure and content of the program directed. Carries out full range of supervisory duties with respect to subordinates: Identifies and resolves developmental needs and problems, completes appropriate administrative actions, complies with EEO and Safety and other regulations and policies. Provides leadership in developing, implementing, evaluating and improving processes for enhancing performance of subordinates. | |

**ACCEPTABLE PERFORMANCE STANDARDS**. With minor exceptions, work is performed in a timely, efficient and cooperative manner; work products demonstrate thorough research, completion of established objectives for the assignment, adherence to instructions and guidance of supervisor and team leader, and acceptable quality as deemed by supervisor or appropriate peer group; and **if an employee is a supervisor**, treatment of subordinates is based on merit and fitness considerations, is consistent with law/rules/regulations/policies, is judged fair and equitable by superiors, and fosters commitment/cooperation/teamwork amongst subordinates.

SPECIFIC OBJECTIVES, TASKINGS, STANDARDS, AND/OR EXAMPLES MAY BE COMMUNICATED TO EMPLOYEES USING THE CCS FORM OR OTHER APPROPRIATE MEANS

**NAVAL RESEARCH LABORATORY**
**CONTRIBUTION-BASED COMPENSATION SYSTEM (CCS) SUMMARY**
**Administrative Support**

Employee_____ Pay Pool Code_____ Appraisal Period Ending_____

Title_____ Pay Plan and Series_____ Career Level_____

SSN_____ Supervisor_____

Most Recent OCS_____ Present Salary_____ Scores within NPR Equivalent to Present Salary _____

| CRITICAL ELEMENTS | *WEIGHT | SCORE | NET SCORE | RATING OF RECORD ACCEPTABLE OR UNACCEPTABLE |
|---|---|---|---|---|
| 1. Problem Solving and Office Administration | _____ | _____ | _____ | _____ |
| 2. Cooperation, Customer Relations, and Supervision | _____ | _____ | _____ | _____ |

*If zero, element not applicable.

Basic Pay Increase %_____

Summary Rating A (Acceptable) or U (Unacceptable) _____
**Must be U if any critical element is rated U**

Contribution Award $_____

Hours _____

OVERALL CONTRIBUTION SCORE (Weighted Average)_____

**SUPPLEMENTAL CRITERIA (OPTIONAL): FOR EXAMPLE, SPECIFIC OBJECTIVES, STANDARDS, TASKINGS, AND/OR EXAMPLES:**

**REMARKS:**

| Signatures and Dates | CCS PLAN | INTERIM REVIEW | APPRAISAL |
|---|---|---|---|
| **Employee** | | | |
| **Supervisor** | | | |

NOTE: Employee's signature under "CCS Plan" signifies that he or she has been given a copy of this form and has a copy of the Elements, Descriptors, Discriminators, and Standards applicable to his or her career track.

## ELEMENT 1: PROBLEM SOLVING AND OFFICE ADMINISTRATION

Instructions: Assign a value (0 - 47) which best represents employee's contributions in the overall element. Descriptors define contributions at high end of each level.

| | | Discriminators | | |
|---|---|---|---|---|
| Level | Point Range | Complexity | Level of Oversight and Applicability of Guidelines | DESCRIPTORS |
| I | 0 - 21 | Performs clerical or technical work involving application of a body of standardized rules, procedures or operations to resolve a full range of standard or recurring clerical/technical problems. | Independently carries out recurring and non-complex work, following supervisor's direction regarding work to be done, priorities, and specific procedures and guidelines to be followed. Locates and selects the most appropriate guidelines and procedures from established sources; makes minor deviations applicable to specific cases. | |
| II | 18 - 34 | Performs clerical or technical work involving application of an extensive body of rules, procedures or operations to resolve a wide-variety of interrelated or nonstandard problems. | Independently plans and carries out steps required to complete assignments; handles problems and deviations. Supervisor defines objectives, overall priorities and deadlines. Selects, interprets and applies guidelines which are available but not completely applicable or have gaps in specificity. | |
| III | 31 - 47 | Performs clerical or technical work involving:<br>- application of principles, concepts and methodologies of a professional and administrative occupation to accomplishment of particularly challenging assignments, operations or procedures; or<br>- application of a wide range of highly technical principles, processes and methods, including refinement of methods or development of difficult but well precedented projects. | Independently determines the approach and methodology used to accomplish work, plans and carries out work and resolves related conflicts. Supervisor sets overall objectives, broad priorities and resources available. Applies considerable judgment and analysis in selecting, interpreting and applying guidelines which are available but not completely applicable or have gaps in specificity. | |

**ACCEPTABLE PERFORMANCE STANDARDS**. With minor exceptions work is performed in a timely, efficient, and cooperative manner; and work products demonstrate completion of established objectives for the assignment, adherence to instructions and guidance of supervisor and team leader, and acceptable quality as deemed by supervisor.

SPECIFIC OBJECTIVES, TASKINGS, STANDARDS, AND/OR EXAMPLES MAY BE COMMUNICATED TO EMPLOYEES USING THE CCS FORM OR OTHER APPROPRIATE MEANS

## ELEMENT 2: COOPERATION AND CUSTOMER RELATIONS/SUPERVISION

Instructions: Assign a value (0 - 47) which best represents employee's contributions in the overall element. Descriptors define contributions at high end of each level.

| | | Discriminators | | | DESCRIPTORS |
|---|---|---|---|---|---|
| **Level** | **Point Range** | **Supervision and Subordinate Development (consider only if employee is a supervisor)** | **Cooperation** | **Customer Relations** | |
| I | 0 - 21 | Not applicable. | Interacts under established circumstances to obtain or give factual information within the immediate organization, office, project, or in related support units. | Independently carries out customer requests within area of responsibility or refers to other appropriate personnel. | |
| II | 18 - 34 | Carries out full range of supervisory duties with respect to Level I or junior Level II employees. Identifies and resolves developmental needs and problems, completes necessary administrative actions, complies with EEO and Safety and other regulations and policies. Develops and maintains resources and processes which enhance ability of subordinates to effectively carry out their duties. | Initiates, engages in, and facilitates cooperative interactions with others inside and outside own organization to: coordinate joint actions, work out problems between own group and others, or gain understanding of other functions sufficient to recommend options to customers. | Interacts with customers to understand customer needs; determines appropriate services to meet needs; and independently carries out such actions or delegates and refers to appropriate personnel. Actively promotes rapport with customers. | |
| III | 31 - 47 | Carries out full range of supervisory duties with respect to lower level staff including one or more who is a senior Level II. Identifies and resolves developmental needs and problems, completes necessary administrative actions, complies with EEO and Safety and other regulations and policies. Develops and maintains resources and processes which enhance ability of subordinates to effectively carry out their duties. | Meets descriptor for Level 2. In addition, is relied upon and consulted by team leader and members as a critical contributor to meeting overall goals. Serves as an example of high level administrative and technical knowledge, and ability to gain cooperation and compliance by persuasion or negotiation. | Works jointly with customers to define organizational needs and problems; establishes customer alliances and translates customer needs to programs and services **OR** applies knowledge of protocol to assisting particularly high-level customers of his or her organization. | |

**ACCEPTABLE PERFORMANCE STANDARDS**. With minor exceptions, personal interactions foster cooperation and teamwork; timely, accurate and acceptable quality service is provided to customers; customer interactions demonstrate appropriate knowledge for level of interaction required by the position; and **if employee is a supervisor,** treatment of subordinates is based on merit and fitness considerations, is consistent with law/rules/regulations/policies, is judged fair and equitable by superiors, and fosters commitment/cooperation/teamwork amongst subordinates.

SPECIFIC OBJECTIVES, TASKINGS, STANDARDS, AND/OR EXAMPLES MAY BE COMMUNICATED TO EMPLOYEES USING THE CCS FORM OR OTHER APPROPRIATE MEANS

**NAVAL RESEARCH LABORATORY**
**CONTRIBUTION-BASED COMPENSATION SYSTEM (CCS) SUMMARY**
**S&E Technical**

Employee_____ Pay Pool Code_____ Appraisal Period Ending_____

Title_____ Pay Plan and Series_____ Career

Level_____

SSN_____ Supervisor_____

Most Recent OCS_____ Present Salary_____ Scores within NPR Equivalent to Present Salary _____

| CRITICAL ELEMENTS | *WEIGHT | SCORE | NET SCORE | RATING OF RECORD ACCEPTABLE OR UNACCEPTABLE |
|---|---|---|---|---|
| 1. Scientific and Technical Problem Solving | _____ | _____ | _____ | _____ |
| 2. Cooperation and Customer Relations and Supervision | _____ | _____ | _____ | _____ |

*If zero, element not applicable.

Basic Pay Increase %_____

Summary Rating A (Acceptable) or U (Unacceptable) _____
**Must be U if any critical element is rated U**

Contribution Award $_____

Hours_____

OVERALL CONTRIBUTION SCORE (Weighted Average)_____

**SUPPLEMENTAL CRITERIA (OPTIONAL): FOR EXAMPLE, SPECIFIC OBJECTIVES, STANDARDS, TASKINGS, AND/OR EXAMPLES:**

**REMARKS:**

| Signatures and Dates | CCS PLAN | INTERIM REVIEW | APPRAISAL |
|---|---|---|---|
| **Employee** | | | |
| **Supervisor** | | | |

NOTE: Employee's signature under "CCS Plan" signifies that he or she has been given a copy of this form and has a copy of the Elements, Descriptors, Discriminators and Standards applicable to his or her career track.

**ELEMENT 1. SCIENTIFIC AND TECHNICAL PROBLEM SOLVING**

Instructions: Assign a value (0 -66) which best represents employee's contributions in the overall element. Descriptors define contributions at high end of each level.

| | | Discriminators | | | |
|---|---|---|---|---|---|
| Level | Point Range | Scope of Project | Scientific and Technical Complexity and Creativity | Level of Oversight | DESCRIPTORS |
| I | 0 - 21 | Performs specific procedures which are typically a segment of a project of broader scope. Work affects the accuracy, reliability or acceptability of further processes. Resolves recurring routine problems independently. Operates and adjusts varied equipment to perform standardized tests or operations involved in testing, data analysis and presentation. | Performs duties that involve related and established steps, processes or methods. Determines what needs to be done by choosing among a few different but easily recognizable situations. Recognizes readily apparent errors requiring limited knowledge of the subject matter. Uses judgment in locating and selecting most appropriate procedures, making minor deviations to adapt the guidelines to specific cases. | Receives routine assignments in terms of objectives to be achieved and without explicit instructions as to work methods, if standard work methods can be used. Resolves routine technical problems in terms of previous experience without reference to supervisor. Explicit instructions for solving technical problems involving unfamiliar conditions, methods, or concepts are provided by the supervisor. | |
| II | 18 - 39 | Independently plans and conducts a block of work which is a complete and conventional project of relatively limited scope or a portion of a large and more diverse project. Work affects the design or operation of systems, equipment, testing operations, research conclusions, or similar activities. | Applies a practical knowledge of technical methods, principles and practices within a narrow area of R&D and program and project to assignments involved with design and planning of moderately complex, well-precedented projects. Assignments require analyses of several possible courses of action, techniques and/or designs; and selection of most appropriate. Considers precedents in carrying out work and makes some adaptations of previous plans and techniques. | Receives guidance and instructions in dealing with unfamiliar practices and problems. On familiar types of assignments, completes work without explicit instructions as to work methods and precedents. Significant deviations from guides requires approval. | |
| III | 36 - 47 | Independently plans and conducts a block of work which is a complete and conventional project of relatively limited scope or a portion of a large and more diverse project. Work affects the design or operation of systems, equipment, testing operations, research conclusions, or similar activities. | Applies a practical knowledge of a wide range of different but established technical methods, principles and practices within a narrow area of research/development program/project to design and planning of difficult but well-precedented projects. Assignments require study, analysis, and consideration of several possible courses of action, techniques and/or designs; and selection of most appropriate. Considers precedents in carrying out work which may be conflicting or are not directly applicable. Adapts previous plans and techniques to fit new situations. | Supervisor outlines overall requirements, providing information on any related work being performed and furnishing general instructions regarding objectives, time limitations, priorities, and similar issues. Plans and carries out successive steps and handles problems and deviations in the work assignments in accordance with accepted practices, policy or instructions. Completed work is evaluated for technical soundness, appropriateness, and conformity to policy and requirements. | |

**ACCEPTABLE PERFORMANCE STANDARDS.** With minor exceptions, work is performed in a timely, efficient, and cooperative manner; and work products demonstrate completion of established objectives for the assignment, adherence to instructions and guidance of supervisor and team leader, and acceptable quality as deemed by supervisor.

SPECIFIC OBJECTIVES, TASKINGS, STANDARDS, AND/OR EXAMPLES MAY BE COMMUNICATED TO EMPLOYEES USING THE CCS FORM OR OTHER APPROPRIATE MEANS

**ELEMENT 1. SCIENTIFIC AND TECHNICAL PROBLEM SOLVING Continued**

Instructions: Assign a value (0 -66) which best represents employee's contributions in the overall element. Descriptors define contributions at high end of each level.

| | | Discriminators | | | |
|---|---|---|---|---|---|
| Level | Point Range | Scope of Project | Scientific and Technical Complexity and Creativity | Level of Oversight | DESCRIPTORS |
| IV | 44 - 59 | Establishes criteria; formulates projects; assesses program effectiveness; investigates or analyzes a variety of unusual conditions, problems, or questions in areas which affect a wide range of major activities. Points out areas for investigation or improvement in their area of expertise. | Applies deep and diversified knowledge to atypical or highly difficult assignments. Thoroughly evaluates various alternatives for meeting objectives, considering applicable technical factors as well as related factors, and recommends the best one. Reviews, analyzes and integrates work performed by others and changes in technology as they relate to the possible impact on projects or programs, systems or processes in employee's area of expertise. Assignments are frequently complicated by many operations which equipment or systems must perform, and many variables that must be considered. Precedents are sometimes absent, but more commonly, the relationships of precedents to particular assignments is obscure. Must deal with conflicting issues. | Supervisor outlines requirements, objectives and operational requirements. Technicians must then analyze problems and develop own approaches and work plans; receives little technical advice or guidance; technical decisions and recommendations are usually accepted by higher authority except when policy, program, or budgetary considerations are overriding. | |
| V | 59 - 66 | Must plan, organize and direct extensive development efforts including broad programs of applied R&D. Uses judgment and ingenuity in converting overall objectives into programs or policies for others to use. Must adjust broad activities carried out to the latest advances in technology and to the changing program needs of an area of research/development. | Provides expert advisory services and leadership for broad and complex programs that advance the state of the art. Programs span various disciplines, are greatly affected by advances in technology and are characterized by highly complex problems for which precedents are lacking in areas critical to the overall effort. Work requires originating new techniques, establishing criteria, or developing new information. Research/development approach is not easily determined and considerable modification of existing techniques is required. Produces documentable modification of existing theories or existing technology. | Supervisor outlines only broad policy and operational objectives and requirements. Technician determines the general R&D approach. Technical supervision is limited to reviewing broad hypotheses and overall approach. Interpretations made by the technician are reviewed but are generally accepted as technically accurate. Supervisor is kept informed and only broad changes in the direction of the work require clearance. | |

**ACCEPTABLE PERFORMANCE STANDARDS.** With minor exceptions, work is performed in a timely, efficient, and cooperative manner; and work products demonstrate completion of established objectives for the assignment, adherence to instructions and guidance of supervisor and team leader, and acceptable quality as deemed by supervisor.

SPECIFIC OBJECTIVES, TASKINGS, STANDARDS, AND/OR EXAMPLES MAY BE COMMUNICATED TO EMPLOYEES USING THE CCS FORM OR OTHER APPROPRIATE MEANS

BILLING CODE 6325-01-C

**ELEMENT 2. COOPERATION AND CUSTOMER RELATIONS/SUPERVISION**

Instructions: Assign a value (0 -66) which best represents employee's contributions in the overall element. Descriptors define contributions at high end of each level.

| | | Discriminators | | |
|---|---|---|---|---|
| Level | Point Range | Teamwork/Customer Relations | Supervision and Subordinate Development (consider only if employee is a supervisor) | DESCRIPTORS |
| I | 0 - 21 | Provides work product which affects the accuracy, reliability, or acceptability of assignments, projects or equipment of broader scope. Independently carries out requests within limited area of responsibility or refers to other appropriate personnel. | Not applicable. | |
| II | 18 - 39 | Provides work product which is a complete project of relatively conventional and limited scope or a portion of a larger project. Work requires a limited degree of coordination and integration of diverse phases carried out by others. Refers to others the more complex and critical aspects of problem exploration, evaluation of approaches, and development or new solutions. | Carries out full range of supervisory duties with respect to Level I or lower Level II employees. Identifies and resolves developmental needs and problems, completes necessary administrative actions, complies with EEO and Safety and other regulations and policies. Develops and maintains resources and processes which enhance ability of subordinates to effectively carry out their duties. | |
| III | 36 - 47 | Provides work product which is a complete conventional project of relatively limited scope, or a portion of a larger and more diverse project. Project requires coordination of several parts, each requiring independent analysis and solution. Technician reviews, analyzes and integrates work performed by other groups or individuals outside the organization. | Carries out full range of supervisory duties with respect to lower level staff including one or more who is a senior Level II. Identifies and resolves developmental needs and problems, completes necessary administrative actions, complies with EEO and Safety and other regulations and policies. Develops and maintains resources and processes which enhance ability of subordinates to effectively carry out their duties. | |
| IV | 44 - 59 | Applies deep and diversified knowledge to atypical or highly difficult assignments in a subject matter or functional area. Acts as spokesperson for their activities; authorize important modifications which conform to broad policy. Coordinate assignments with those of engineers in other disciplines or subject matter areas; represent their offices in the exchange of data and discussion of technical problems at meetings. | Carries out full range of supervisory duties with respect to lower level staff, including one or more who is a senior Level III. Identifies and resolves developmental needs and problems, completes necessary administrative actions, complies with EEO and Safety and other regulations and policies. Develops and maintains resources and processes which enhance ability of subordinates to effectively carry out their duties. | |
| V | 59 - 66 | Recognized as a significant contributor to a scientific or engineering field as a leader of a productive R&D team or a leader in the conception and formulation of productive R&D ideas. Recognized as an expert in own field and is regularly sought out for consultation and/or takes leadership on important committees dealing with technical matters. | Oversees the overall planning, direction, and timely execution of a technical support program, including development, assignment, and higher level clearance of goals and objectives for subordinates. Carries out full range of supervisory duties with respect to subordinates: identifies and resolves developmental needs and problems; completes appropriate administrative actions, complies with EEO and Safety and other regulations and policies; develops and maintains resources and processes which enhance ability of subordinates to effectively carry out their duties. Manages policy and organizational changes, and changes to the structure and content of the program directed. Provides leadership in developing, implementing, evaluating, and improving processes and procedures for enhancing performance of subordinates. | |

**ACCEPTABLE PERFORMANCE STANDARDS.** With minor exceptions, personal interactions foster cooperation and teamwork; timely, accurate and acceptable quality service is provided to customers; customer interactions demonstrate appropriate knowledge for level of interaction required by the position; and **if employee is a supervisor,** treatment of subordinates is based on merit and fitness considerations, is consistent with law/rules/regulations/policies, is judged fair and equitable by superiors, and fosters commitment/cooperation/teamwork amongst subordinates.

SPECIFIC OBJECTIVES, TASKINGS, STANDARDS, AND/OR EXAMPLES MAY BE COMMUNICATED TO EMPLOYEES USING THE CCS FORM OR OTHER APPROPRIATE MEANS

**Appendix E: Computation of the IPS and the NPR**

The NRL demonstration project will use an IPS which links basic pay to contribution scores determined by the CCS process. The area where basic pay and level of contribution are assumed to be properly related is called the NPR. An employee whose CCS score and rate of basic pay plot within the NPR is considered to be contributing at a level consistent with pay. Employees whose pay plots below the NPR for their assessed score are considered ''undercompensated,'' while employees whose score and pay plot above the NPR are considered ''overcompensated.''

The purpose of this scoring and pay structure is to spread the full range of basic pay provided by the GS, between GS–1, step 1 and GS–15, step 10, into 80 intervals (scores and pay above those points are related using the same parameters). Each interval is a fixed percentage of the pay associated with the previous point.

For each possible contribution score available to employees, the NPR spans a basic pay range of 12 percent. The lower boundary (or ''rail'') is established by fixing the basic pay equivalent to GS–1, step 1, with a CCS score of zero. The upper boundary is fixed at the basic pay equivalent to GS–15, step 10, with a CCS score of 80. The distance between these upper and lower rails for a given overall contribution score is then computed to ensure the range of 12 percent of basic pay for each available CCS score.

The middle rail of the NPR is computed as 6 percent above the lower rail. This point is used in connection with certain limits established for pay increases (see section IV.C.7).

From the above considerations, five variables, or inputs, were identified. They are as follows:

1. Variable A: GS–1, step 1 (lowest salary)
2. Variable B: GS–15, step 10 (highest salary)
3. Variable C: Current C-values
4. Variable M: 6 percent (middle rail computation above the low rail)
5. Variable H: 12 percent (high rail computation above low rail)

Other variables are as follows:

1. Variable N: Number of C-value steps at GS–15, step 10
2. Variable P (step increase): Salary value for each C-value equal to 1 + percentage increase

From these variables, the following formula definitions were developed:

Low rail = A*(P^C)
Mid rail = (1+M)*A*(P^C)
High rail = (1+H)*A*(P^C)
Where P = (B/(A*(1+H)))^(1/N)

As an example, a result of the above computation, using the 1999 GS Salary Table, P (step increase) equals 1.023663611. Attachment (1) is a complete list of CCS career level scores and basic pay ranges. Attachment (2) contains graphic representations of these tables for each career track.

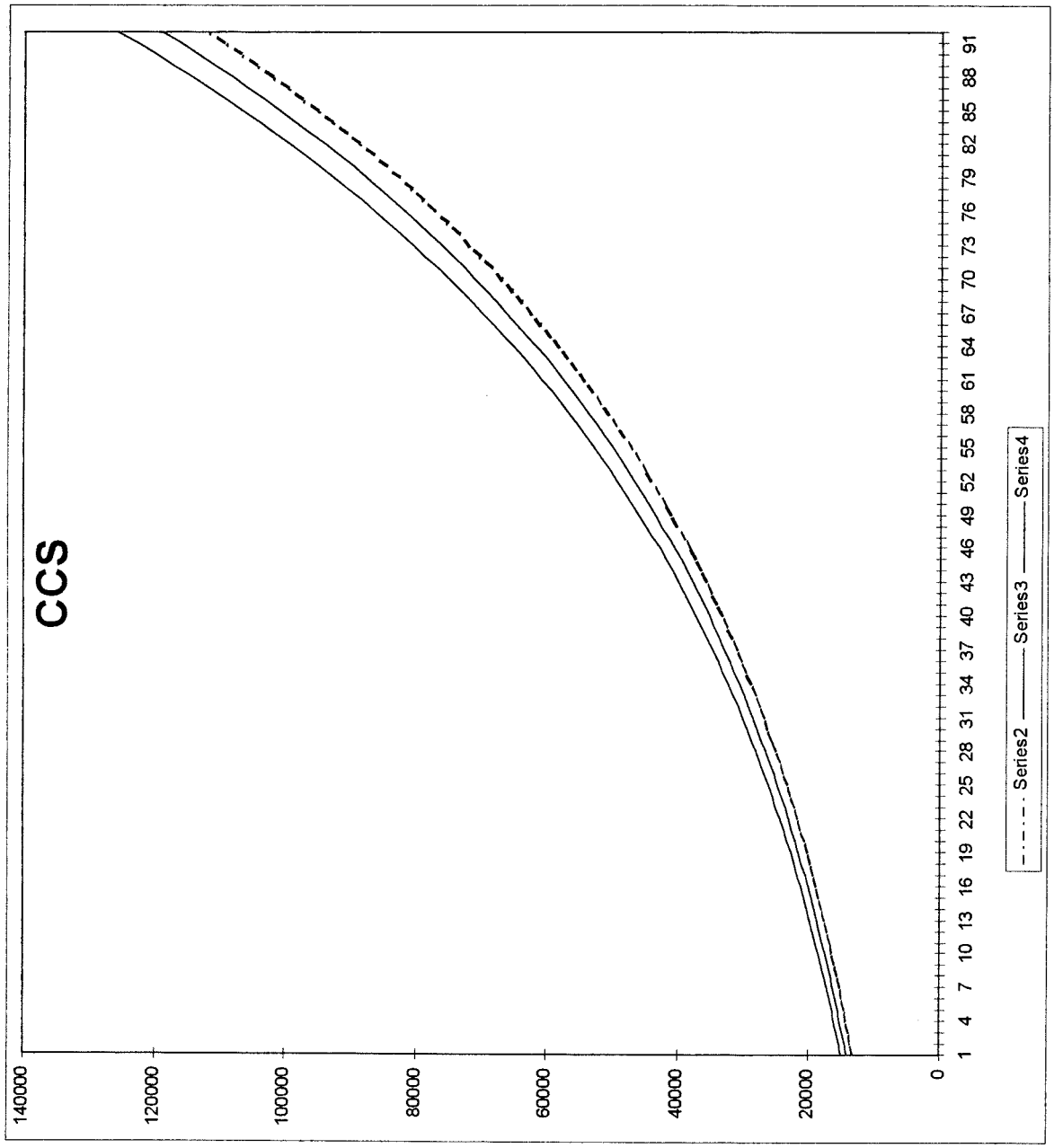
Once the C-values (0–80) are determined, the CCS career levels and scores are extended at the same percentage increments as were computed for the step increase above. These C-values are extended to encompass the equivalent of ES–4 effective January 1999. In the example, SES Level ES–4 is equal to basic pay of $118,000 and is encompassed by the C-value 89 ($107,119 to $119,974).

**Attachment to Appendix E: 1999 Inputs**

GS 1-Step 1: 13,362
GS 15-Step 10: 97,201
# C values: 80
Mid%: 6.00%
Hi%: 12.00%

| C value | Low rail | Mid rail | Hi rail |
|---|---|---|---|
| 0 | 13362 | 14164 | 14965 |
| 1 | 13678 | 14499 | 15320 |
| 2 | 14002 | 14842 | 15682 |
| 3 | 14333 | 15193 | 16053 |
| 4 | 14672 | 15553 | 16433 |
| 5 | 15020 | 15921 | 16822 |
| 6 | 15375 | 16297 | 17220 |
| 7 | 15739 | 16683 | 17627 |
| 8 | 16111 | 17078 | 18045 |
| 9 | 16493 | 17482 | 18472 |
| 10 | 16883 | 17896 | 18909 |
| 11 | 17282 | 18319 | 19356 |
| 12 | 17691 | 18753 | 19814 |
| 13 | 18110 | 19196 | 20283 |
| 14 | 18538 | 19651 | 20763 |
| 15 | 18977 | 20116 | 21254 |
| 16 | 19426 | 20592 | 21757 |
| 17 | 19886 | 21079 | 22272 |
| 18 | 20356 | 21578 | 22799 |
| 19 | 20838 | 22088 | 23339 |
| 20 | 21331 | 22611 | 23891 |
| 21 | 21836 | 23146 | 24456 |
| 22 | 22353 | 23694 | 25035 |
| 23 | 22882 | 24255 | 25628 |
| 24 | 23423 | 24829 | 26234 |
| 25 | 23977 | 25416 | 26855 |
| 26 | 24545 | 26018 | 27490 |
| 27 | 25126 | 26633 | 28141 |
| 28 | 25720 | 27263 | 28807 |
| 29 | 26329 | 27909 | 29488 |
| 30 | 26952 | 28569 | 20186 |
| 31 | 27590 | 29245 | 30900 |
| 32 | 28243 | 29937 | 31632 |
| 33 | 28911 | 30646 | 32380 |
| 34 | 29595 | 31371 | 33146 |
| 35 | 30295 | 32113 | 33931 |
| 36 | 31012 | 32873 | 34734 |
| 37 | 31746 | 33651 | 35556 |
| 38 | 32497 | 34447 | 36397 |
| 39 | 33266 | 35262 | 37258 |
| 40 | 34054 | 36097 | 38140 |
| 41 | 34859 | 36951 | 39042 |
| 42 | 35684 | 37825 | 39966 |
| 43 | 36529 | 38720 | 40912 |
| 44 | 37393 | 39637 | 41880 |
| 45 | 38278 | 40575 | 42871 |
| 46 | 39184 | 41535 | 43886 |
| 47 | 40111 | 42518 | 44924 |
| 48 | 41060 | 43524 | 45987 |
| 49 | 42032 | 44554 | 47076 |
| 50 | 43026 | 45608 | 48190 |
| 51 | 44045 | 46687 | 49330 |
| 52 | 45087 | 47792 | 50497 |
| 53 | 46154 | 48923 | 51692 |
| 54 | 47246 | 50081 | 52915 |
| 55 | 48364 | 51266 | 54168 |
| 56 | 49508 | 52479 | 55449 |
| 57 | 50680 | 53721 | 56761 |
| 58 | 51879 | 54992 | 58105 |
| 59 | 53107 | 56293 | 59480 |
| 60 | 54363 | 57625 | 60887 |
| 61 | 55650 | 58989 | 62328 |
| 62 | 56967 | 60385 | 63803 |
| 63 | 58315 | 61814 | 65313 |
| 64 | 59695 | 63276 | 66858 |
| 65 | 61107 | 64774 | 68440 |
| 66 | 62553 | 66307 | 70060 |
| 67 | 64034 | 67876 | 71718 |
| 68 | 65549 | 69482 | 73415 |
| 69 | 67100 | 71126 | 75152 |
| 70 | 68688 | 72809 | 76930 |
| 71 | 70313 | 74532 | 78751 |
| 72 | 71977 | 76296 | 80614 |
| 73 | 73680 | 78101 | 82522 |
| 74 | 75424 | 79949 | 84475 |
| 75 | 77209 | 81841 | 86474 |
| 76 | 79036 | 83778 | 88520 |
| 77 | 80906 | 85760 | 90615 |
| 78 | 82821 | 87790 | 92759 |
| 79 | 84780 | 89867 | 94954 |
| 80 | 86787 | 91994 | 97201 |
| 81 | 88840 | 94171 | 99501 |
| 82 | 90943 | 96399 | 101856 |
| 83 | 93095 | 98680 | 104266 |
| 84 | 95298 | 101015 | 106733 |
| 85 | 97553 | 103406 | 109259 |
| 86 | 99861 | 105853 | 111844 |
| 87 | 102224 | 108358 | 114491 |
| 88 | 104643 | 110922 | 117200 |
| 89 | 107119 | 113547 | 119974 |
| 90 | 109654 | 116233 | 122813 |
| 91 | 112249 | 118984 | 125719 |

BILLING CODE 6325–01–P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40000
20000
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Series2
Series3
Series4

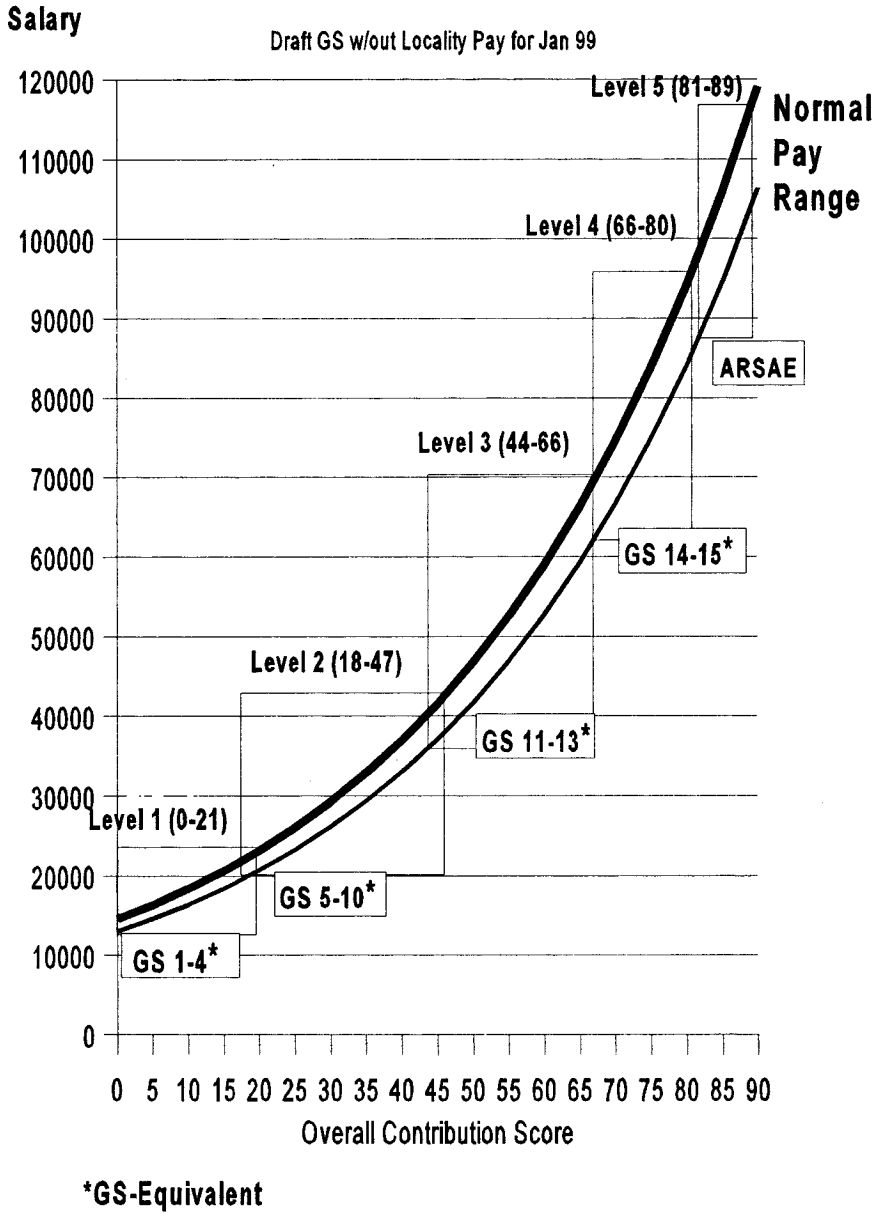
Formula Definitions:

| | |
|---|---|
| Low Rail = | A*(P^C) |
| Mid Rail = | (1+M)*A*(P^C) |
| Hi Rail = | (1+H)*A*(P^C) |
| | where |
| P = | (B/(A*(1+H)))^(1/N) |
| | (Step Increase) |
| Step Increase | 1.023663611 |

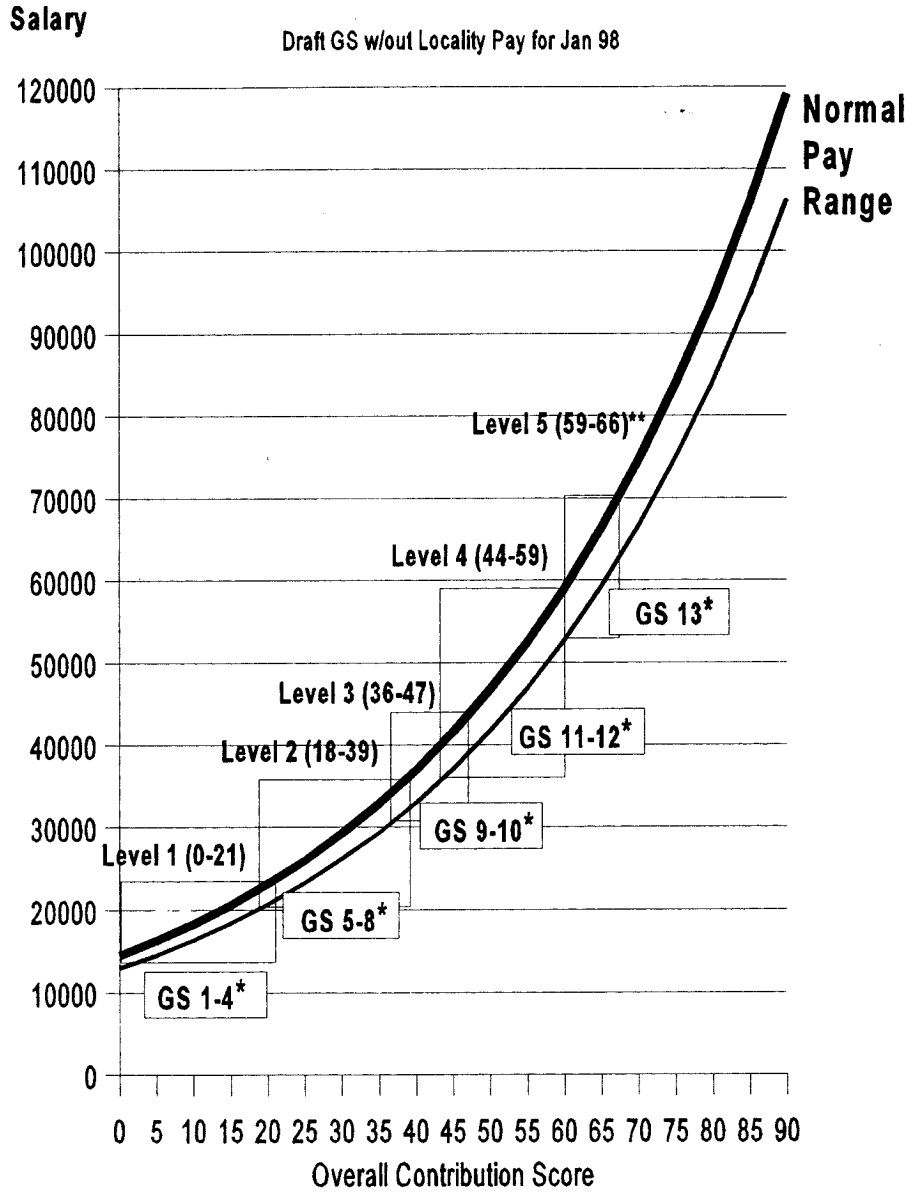
Variable Definitions:

| | |
|---|---|
| A = | Salary for GS-1 Step-1 |
| B = | Salary for GS-15 Step-10 |
| C = | Current C Value (column A) |
| H = | percentage increase of Hi Rail above Lo Rail |
| M = | percentage increase of Mid Rail above Lo Rail |
| N = | # of C-value steps at GS-15 Step-10 |
| P = | percentage increase in salary for each C-value (Step Increase) |

# NRL Integrated Pay



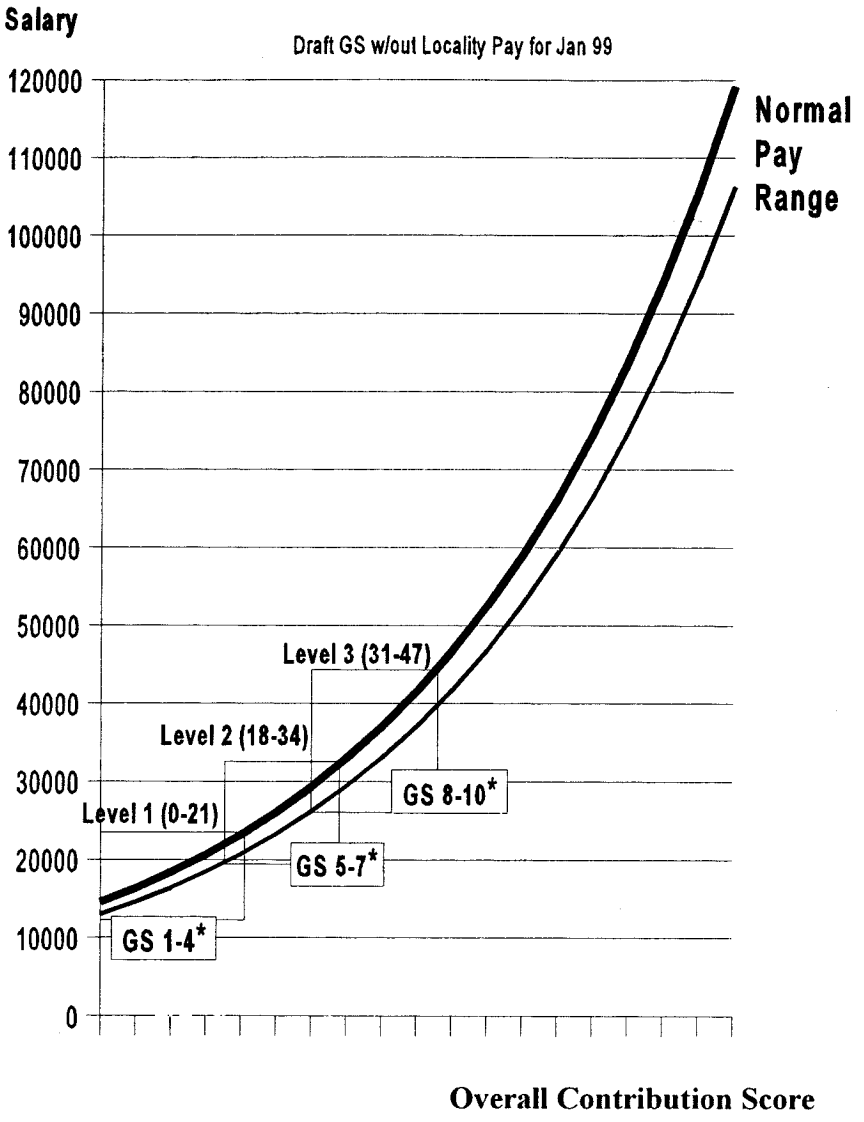

**NRL Integrated Pay Schedule in Relation to S&E Professional Career Track**




* GS-Equivalent

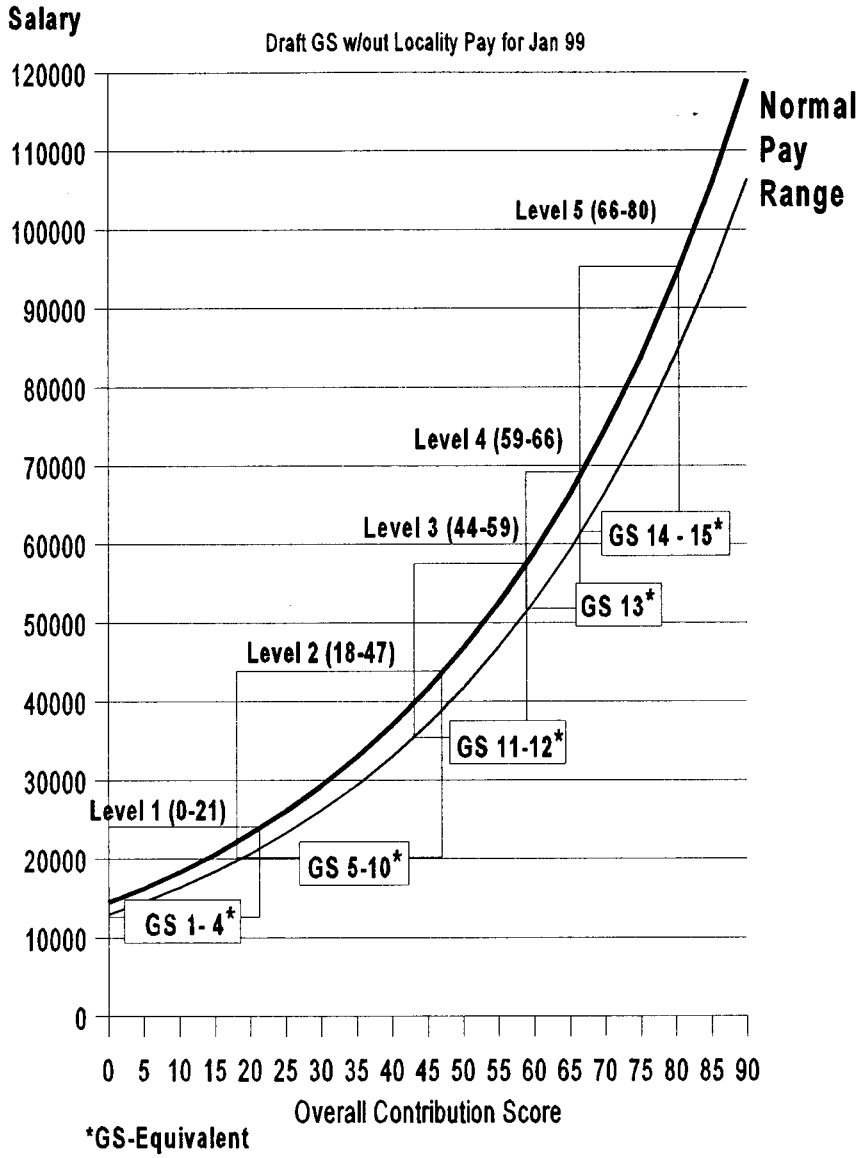
** Temporary level to be discontinued when current incumbents have left.

**NRL Integrated Pay Schedule in Relation to S&E Technical Career Track**




*GS-Equivalent

NRL Integrated Pay Schedule in Relation to Administrative Support Career Track




**NRL Integrated Pay Schedule in Relation to Administrative Specialist and Professional Career Track**

## Appendix F: Requirements Document Sample

DATE: 4/18/96
INCUMBENT: DOC#: K900000000

I. POSITION AND ORGANIZATION INFORMATION

Position: S&E Professional, Career Level II
Specialization: Electronics Engineer, 855
Organizational Location: Electronics S&T Division, Code 6899
Organizational Mission: The Division plays a central role in the source of technical expertise for various agencies within the Navy and the Department of Defense. The Division is composed of Branches which form a broad multi-disciplinary approach to electronic R&D of electronic components and circuits technologies which are relevant to Navy electronic system requirements.
Purpose of Position: Designs devices, systems and circuitry for R&D applications, and constructs digital and microprocessor prototypes. Participates with other engineers and scientists in schematics of circuits; establishes design specifications; and constructs or directs the construction and assembly of prototype equipment. The incumbent possesses a professional knowledge of engineering including the design and development of microprocessor circuitry required to perform hardware and software integration; to design digital and microprocessor-based circuits; to test and debug digital and microprocessor-based circuits. The selective placement factor is demonstrated experience in microprocessor-based circuits

II. CERTIFICATIONS:
Supervisory Certification: I certify that this is an accurate statement of the major duties and responsibilities of this position and its organizational relationships, and that the position is necessary to carry out Government functions for which I am responsible. This certification is made with the knowledge that this information is to be used for statutory purposes relating to appointment and payment of public funds, and that false or misleading statements may constitute violations of such statutes or their implementing regulations.

_____ _____
Name and Title of Immediate Supervisor Signature and Date

_____ _____
Name and Title of Higher-level Supervisor Signature and Date

Classification Certification: I certify that this position has been classified and graded as required by Title 5 U.S. Code in conformance with the standards applicable to the NRL Demonstration Project.

_____ _____
Name and Title of Classification Official Signature and Date

III. DUTIES AND RESPONSIBILITIES:

Scientific and Technical Problem Solving: Conducts inhouse technical activities or may provide contract technical support with minimal oversight. Works closely with peers in collectively solving problems of moderate complexity. Accomplishes small tasks independently or assists higher-level scientists and engineers. Recognized internally for technical expertise. Provides data and written analysis to contractual documents, reports and papers and/or reviews contractual reports; work is acknowledged in team publications. Presents oral material effectively to other team members, supervisors and external contractors. Disseminates technical results of own studies, tasks or contract results. Conducts activities under guidance of supervisor and/or team leader.

Cooperation and Supervision: Contributes as a technical researcher or team member to all aspects of team's responsibilities. May technically guide or mentor technician and/or less experienced and junior-level personnel. Receives guidance from supervisor and/or team leader and carries out duties in a professional, responsive and cooperative manner. No supervisory responsibilities are required.

R&D Business Management: As a team member meets with customers to understand customer requirements and demonstrate expertise. Stays current in areas of expertise and contributes as a team member to new program development. Collects information for proposal marketing activities. Manages elements of inhouse work units or assists in managing a scientific or support contract. Uses personal resources efficiently under guidance of supervisor or team leader. Aware of and makes appropriate

use of available resources. Participate as a team member in demonstrating technology and in interacting with customers. With guidance, contributes to technical content of partnerships for transition or transfer (ATD's, MOU's, JDL and Reliance, CRADA's, and other dual-use vehicles).

IV. STAFFING KNOWLEDGE, SKILLS and ABILITIES: Ability to communicate orally and in writing. Ability to recognize and analyze problems, conduct research, summarize results and recommendations. Ability to plan and organize work and set priorities. Professional knowledge of a specialized area of science and/or engineering.

V. OTHER POSITION REQUIREMENTS:
Security Clearance Requirement: Top Secret
FLSA: Non-exempt
Drug Testing Requirement: Testing Designated Position
Financial Disclosure Requirement: None
Sea and Flight Duty: None

VI. REMARKS:
Target Career Level:
Comp Level:
Skills Codes:
Salary Comparison Code:

Revised 11/4/97

Appendix G: Sample OPM Intervention Impact Evaluation Model

| INTERVENTIONS COVERAGE: | EXPECTED EFFECTS | MEASURES | DATA SOURCES |
|---|---|---|---|
| **1. Contribution-based Compensation** | - increased organizational flexibility | - perceived flexibility | attitude survey |
| **a. broad-banding** | - reduced administrative work load, paperwork reduction | - actual/perceived timesaving, length of PDs | personnel office data, PME results, attitude survey |
| | - advanced in-hire rates | - starting salaries of banded vs. non-banded employees | workforce data |
| | - slower pay progression at entry levels | - progression of new hires over time by band, career path | |
| | - increased pay potential | - mean salaries by band, career path, demographics | |
| | - higher average salaries | - total payroll cost | |
| | - increased satisfaction with advancement | - employee perceptions of advancement | attitude survey |
| | - increased pay satisfaction | - pay satisfaction, internal/ external equity | |
| | - improved recruitment | - offer/acceptance ratios | personnel office data |
| no change in high-grade (GS-14 +) distribution | | - number/percentage of white collar employees at hi-grade salaries pre/post banding | workforce data |
| | | - number/percentage of white collar employees at SL/ST pre/post banding | |
| | | - percent declinations | |
| 2. Contribution/Performance Management | - reward performance | - number and average amounts of contribution awards by career path, demographics, performance | workforce data |
| a. cash awards/bonuses | - pay-performance link | -perceived fairness of awards | attitude survey |
| | - support fair and appropriate distribution of awards | -satisfaction with monetary awards | |

| | | | |
|---|---|---|---|
| **b. Performance/ contribution-based pay progression** | - increased pay-performance link<br><br><br><br><br><br><br><br>-improved performance feedback, communication<br><br><br><br>- increased retention of high performers/turnover of low performers<br><br>-differential pay progression of high/low performers<br>- reduced pay for low performers<br>- alignment of organizational and individual performance expectations and results<br><br>-increased employee involvement in performance planning and assessment | - pay-performance correlations<br>- perceived pay-performance link<br>- perceived fairness of OCS<br>- satisfaction with OCS<br>- employee trust in supervisors<br>- adequacy of performance feedback, communication of expectations<br><br>- turnover by OCS's<br>-OCS distribution<br><br>- pay progression by OCS's , career path, demographics<br>- number of employees with reduced pay<br><br>- linkage of performance plans to strategic plans/goals<br>- performance expectations<br><br>- perceived involvement<br>- procedures | workforce data<br><br>attitude survey<br><br><br><br><br><br><br><br><br><br>workforce data<br><br><br><br><br><br>performance plans, strategic plans<br><br><br><br>attitude survey/focus groups<br>personnel regulations |
| **c. Supervisory panel review** | - increased consistency of OCS's | - perceived fairness of OCS's | attitude survey/focus groups |
| **d. New appraisal process** | -reduced administrative burden<br>-improved communication | - employee and supervisor perception of revised procedures | personnel regulations/ performance plans/ attitude survey/ focus groups |
| **e. Performance development** | - better communication of performance expectations<br>-improved satisfaction with development | -perceived feedback and communication<br>-organizational commitment<br>-perceived workforce quality<br>-time, funds spent on training by demographics | attitude survey<br>focus groups<br><br>personnel office data/training records |

**Appendix H: NRL Internal Evaluation**

| Interventions | Expected effects | Measures | Data sources |
|---|---|---|---|
| 1. Staffing and recruitment | - less recruitment time for general, noncitizen and armed forces members | - management satisfaction with hiring process | survey, focus groups |
| | | - time to hire | personnel office data |
| | - less recruitment cost | - time to hire | personnel office data |
| | - less cost for promotion of noncitizens | - time to promote | personnel office data |
| | - increased desire to recruit armed forces members | - number of recruitment actions | |
| 2. Retention | - retain high performing employees with needed skills | - turnover rate by demonstration project category, minority code, females, age, reason for leaving and CCS rating | personnel office data |
| | | - management satisfaction | management survey |
| 3. RIF | - reduced work and cost | - time to conduct RIF | personnel office data |
| | | - number of people impacted and separated | |
| | - minimized adverse effect on women, minorities and veterans' | - number of separation incentives | personnel office data |
| | | - number of women, minorities and veterans' impacted | |
| 4. Details | - less time to process details | - number and length of time of details | personnel office data |
| 5. PPP | - correct skills imbalances | - number of internal actions | personnel office data |
| | - make major work adjustments | - reason for internal placements | |
| | - manage downsizing more effectively | - time to recruit for internal placements | management survey |
| | - reduce need to conduct RIF | - management satisfaction | |

| Interventions | Expected effects | Measures | Data sources |
|---|---|---|---|
| 6. Salary increases | - wider distribution of pay for contribution<br>- improved external equity | - cost of merit increases<br>- cost of incentive pay<br>- amount of comparability withheld | CCSDS |
| 7. Separations | - retain high performing employees with needed skills | - number separated<br>- reason for separation<br>- CCS rating<br>- percent of low performers separated<br>- percent of high performers separated | personnel office data |
| 8. Personnel action processing | - less time to process personnel actions | - number of actions processed<br>- average time to process actions | personnel office data |

[FR Doc. 99–15984 Filed 6–23–99; 8:45 am]
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Federal Register

Thursday
June 24, 1999

Part IV

# Department of Education

**34 CFR Part 300**

**Assistance to States for the Education of Children With Disabilities; Final Rule**

## DEPARTMENT OF EDUCATION

### 34 CFR part 300

**RIN 1820–AB40**

### Assistance to States for the Education of Children With Disabilities

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Final regulations; correction.

**SUMMARY:** On March 12, 1999, final regulations were published for the Assistance to States for the Education of Children with Disabilities program at 64 FR 12406–12674. Appendix B to the regulations, entitled ''Index for IDEA—Part B Regulations,'' has been revised as described in the Supplementary Information that follows.

**DATES:** These regulations are effective June 24, 1999.

**FOR FURTHER INFORMATION CONTACT:** Thomas B. Irvin or JoLeta Reynolds (202) 205–5507. Individuals who use a telecommunication device for the deaf (TDD) may call (202) 205–5465.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to Katie Mimcey, Director of the Alternate Formats Center. Telephone: (202) 205–8113.

**SUPPLEMENTARY INFORMATION:** On March 12, 1999 (64 FR 12406), the Secretary published final regulations for the Assistance to States for the Education of Children with Disabilities program. Appendix B to those regulations, entitled ''Index for IDEA—Part B Regulations,'' was included as a technical assistance document to enable readers to locate quickly (by section number and paragraph) the specific requirements related to key topics in the regulations.

The index included in this publication has been revised to: (1) Make needed corrections to certain regulatory citations; (2) change the format of the document in order to enhance its readability; and (3) make other technical changes.

#### Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

#### Regulatory Flexibility Act Certification

The Secretary certifies that this regulatory document will not have significant economic impact on a substantial number of small entities. The document includes only technical changes to Appendix B of the final Part B regulations that were published in the **Federal Register** on March 12, 1999.

#### Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR Part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

#### Assessment of Educational Impact

We have determined that these regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

#### Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://gcs.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, D.C., area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number: 84.027 Assistance to States for the Education of Children with Disabilities.)

#### List of Subjects in 34 CFR part 300

Administrative practice and procedure, Education of individuals with disabilities, Elementary and secondary education, Equal educational opportunity, Grant programs—education, Privacy, Private schools, Reporting and recordkeeping requirements.

Dated: June 21, 1999.

**Richard W. Riley,**

*Secretary of Education.*

In the final rule published on March 12, 1999 (64 FR 12406), make the following correction. Beginning on page 12481, correct Appendix B to Part 300 to read as follows:

**BILLING CODE 4000–01–U**

# APPENDIX B
# INDEX FOR IDEA— PART B REGULATIONS
(34 CFR Part 300)

| DEF | |
|---|---|
| **DEFINITIONS (M-O)** | |
| --Medical services | 300.24(b)(4) |
| --Mental retardation | 300.7(c)(6) |
| --Multiple disabilities | 300.7(c)(7) |
| --Native language | 300.19 |
| --Occupational therapy | 300.24(b)(5) |
| --Orientation and mobility services | 300.24(b)(6) |
| --Orthopedic impairment | 300.7(c)(8) |
| --Other health impairment | 300.7(c)(9) |
| --Outlying area | 300.718 |
| **DEFINITIONS (P-R)** | |
| --Parent | 300.20 |
| --Parent counseling and training | 300.24(b)(7) |
| --Parent training and information center (defined in sec. 602(21) of Act; term used in §§300.506(d)(1)(i) (mediation, and 300.589 (waiver of nonsupplanting requirement)) | — |
| --Participating agency (as used in "confidentiality") | 300.560(c) |
| --Participating agency (as used in IEP requirements Re "transition services") | 300.340(b) |
| --Party or parties | 300.583(a) |
| --Personally identifiable | 300.500(b)(3) |
| --Physical education | 300.26(b)(2) |
| --Physical therapy | 300.24(b)(8) |
| --Private school children with disabilities | 300.450 |
| --Profession or discipline | 300.136(a)(3) |
| --Psychological services | 300.24(b)(9) |
| --Public agency | 300.22 |
| --Public expense | 300.502(a)(3)(ii) |
| --Qualified personnel | 300.23 |
| --Recreation | 300.24(b)(10) |
| --Rehabilitation counseling services | 300.24(b)(11) |
| --Related services | 300.24 |
| --Revoke consent at any time | 300.500(b)(1) |
| **DEFINITIONS (S)** | |
| --School day | 300.9(c) |
| --School health services | 300.24(b)(12) |
| --Secondary school | 300.25 |
| --Social work services in schools | 300.24(b)(13) |
| --Special education | 300.26 |
| --Specially designed instruction | 300.26(b)(3) |
| --Specific learning disability | 300.7(c)(10) |
| --Speech-language pathology services | 300.24(b)(14) |
| --Speech or language impairment | 300.7(b)(11) |
| --State | 300.27 |
| --State (special definition) | 300.700 |
| --State-approved or recognized certification, licensing, registration, or other comparable requirements | 300.136(a)(4) |
| --Substantial evidence | 300.521(e) |
| --Supplementary aids and services | 300.28 |
| --Support services | 300.370(b)(2) |

| TI-TR | |
|---|---|
| TIMELINES—DISCIPLINE (A-C) | |
| --Authority of hearing officer (may order change of placement for not more than 45 "days" . | 300.521 |
| --Authority of school personnel—may order: | |
| • Change of placement for not more than 45 "days" for weapons or drugs | 300.520(a)(2) |
| • Removal of a child for not more than 10 "school days" | 300.520(a)(1) |
| --Change of placement for disciplinary removals: | |
| • Of more than 10 consecutive "school days" | 300.519(a) |
| • That cumulate to more than 10 "school days" | 300.519(b) |
| --Change of placement for disciplinary removals: | |
| • Of more than 10 consecutive "school days" | 300.519(a) |
| • That cumulate to more than 10 "school days" | 300.519(b) |
| TIMELINES—DISCIPLINE (D-L) | |
| --Development of assessment plan by IEP team (before or not later than 10 "business days") | 300.520(b) |
| --Expedited due process hearings | |
| • Conducted in no less than 2 "business days" | 300.528(a)(1) |
| • Decision in 45 "days"—with no exceptions or extensions | 300.528(b)(1) |
| --Hearing officer (order change of placement for not more than 45 "days") | |
| TIMELINES—DISCIPLINE (M-Z) | |
| --Manifestation determination review (conducted in no case later than 10 "school days" after date of decision to remove a child under §§300.520(a)(2) or 300.521 or 300.519) | 300.523(a)(2) |
| --Placement during appeals—not longer than 45 "days" | 300.526(c)(3) |
| --Removals for not more than: | |
| • 10 "school days" (by school personnel) | 300.520(a) |
| • 45 "days" (to interim alternative education setting): | |
| —By a hearing officer (for substantial likelihood of injury to child or others) | 300.521(b) |
| —By school personnel (for weapons or drugs) | 300.520(b) |
| TIMETABLES—Full educational opportunity goals (FEOG) | 300.124 |
| TRAINING | |
| --Assistive technology services (see §300.6(e), (f)) | — |
| --Joint training of parents and personnel | 300.382(j) |
| --Parent counseling and training | 300.24(b)(7) |
| --Personnel standards | |
| • Policies and procedures (establish a specified training standard) | 300.136(b)(3) |
| • Policy to address shortage of personnel | 300.136(g)(2) |
| • Steps for retraining or hiring personnel | 300.136(c) |
| --Travel training (see §300.26(a)(2)(ii), (b)(4)) | — |
| TRANSFER OF RIGHTS | 300.517 |
| --IEP requirement | 300.347(c) |
| --Special rule (if student is incompetent) | 300.517(b) |
| --To students in correctional institutions | 300.517(a)(2) |

[FR Doc. 99–16074 Filed 6–23–99; 8:45 am]
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June 24, 1999

Part V

# Department of Agriculture

**Cooperative State Research, Education, and Extension Service**

**7 CFR Part 3400**

**Special Research Grants Program; Final Rule**

## DEPARTMENT OF AGRICULTURE

## Cooperative State Research, Education, and Extension Service

## 7 CFR Part 3400

## Special Research Grants Program

**AGENCY:** Cooperative State Research, Education, and Extension Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Special Research Grants Program Administrative Regulations to replace references to section 2 of the Act of August 4, 1965, with references to the Competitive, Special, and Facilities Research Grant Act (CSFRGA), to apply to competitive and noncompetitive grants, to include extension and educational activities under the regulation, to shorten the maximum potential grant award period, to require grantees to arrange for scientific peer review of their proposed research activities and merit review of their proposed extension and education activities prior to award, in accordance with subsection (c)(5) of CSFRGA, as amended by section 212 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 450i(c)(5)), and to require an annual report of the results of the research, extension, or education activity and the merit of the results.

**EFFECTIVE DATE:** June 24, 1999.

**FOR FURTHER INFORMATION CONTACT:** Dr. Sally Rockey, Deputy Administrator, Competitive Research Grants and Awards Management, USDA Cooperative State Research, Education, and Extension Service, Mail Stop 2240, 1400 Independence Avenue, SW, Washington, DC 20250–2240; telephone, (202) 401–1761; e-mail, srockey@reeusda.gov.

**SUPPLEMENTARY INFORMATION:** The Cooperative State Research, Education, and Extension Service (CSREES) published a Notice of Proposed Rulemaking (NPRM) to amend the administrative provisions to the Special Research Grants Program in the **Federal Register** on March 24, 1999 (64 FR 14348).

### Background and Purpose

Under the authority of subsections (c)(1)(A) and (B) of the Competitive, Special, and Facilities Research Grants Act, as amended (7 U.S.C. 450i), the Secretary of Agriculture is authorized to make special grants for the conduct of research, extension or education activities to facilitate or expand promising breakthroughs in areas of food and agricultural sciences; promote excellence in research, extension or education on a regional and national level; promote the development of regional research centers; promote the research partnership between the Department of Agriculture, colleges and universities, research foundations, and State agricultural experiment stations for regional research efforts; and facilitate coordination and cooperation of research, extension, or education among States through regional grants.

On June 23, 1998, President Clinton signed into law the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA) (Pub. L. No. 105–185). The Competitive, Special, and Facilities Research Grants Act, CSFRGA (formerly section 2 of the Act of August 4, 1965, Pub. L. No. 89–106, as retitled by Section 401(a) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (FACT Act Amendments), Pub. L. No. 102–237), as amended by section 212(2) of AREERA, states in subsection (c)(5) that the Secretary shall make a grant under this authority for a research activity only if the activity has undergone scientific peer review arranged by the grantee in accordance with regulations promulgated by the Secretary. Likewise, subsection (c)(5) of CSFRGA, as amended by section 212(2) of AREERA, states that the Secretary shall make a grant under this authority for an extension or education activity only if the activity has undergone merit review arranged by the grantee in accordance with regulations promulgated by the Secretary.

This rule revises section 3400.1 to expand the scope of the current regulations to apply to all subsection (c) awards, including both competitive and noncompetitive awards made under this authority. The rule also revises these regulations to address extension and education activities in addition to research activities.

Subpart C of the rule specifies the basic parameters for scientific peer and merit review, and not detailed procedures, to provide applicants with maximum flexibility in determining the timing and use of resources. Applicants are free to change peer or merit review protocols as deemed appropriate, as long as the peer or merit review continues to meet the requirements of this rule. CSREES, however, has reserved the right under this rule to specify the timing of submission of the notice of completion of review.

Section 3400.20 requires that applicants provide notice acting as certification prior to an award by CSREES that the review has been completed. Having applicants submit only a notice of compliance, and not the actual review documentation or results, aims to minimize the administrative burden on the applicants. The regulations, however, do require that the applicant retain the review documentation and, consistent with agency assistance regulations, such documentation may be subject to agency inspection.

Subpart D of the rule requires that recipients submit annual reports describing the results of the research, extension, or education activity. The agency currently requires that recipients submit annual and final performance reports as a term and condition of each award. The agency believes that this meets the reporting requirements added by section 212 of AREERA.

This rule also makes technical amendments to Part 3400 to change references to the Act of August 4, 1965, to the Competitive, Special, and Facilities Research Grant Act as retitled by Section 401(a) of the FACT Act Amendments. The rule also changes the maximum potential award period for Special Grants from five (5) years to three (3) years to conform with the amendments in section 212 of AREERA.

### Public Comments and Statutory Changes

In the NPRM, CSREES invited comments on the proposed regulations for consideration in the formulation of a final rule. Three commenters responded.

One commenter supported efforts aimed at ensuring accountability and the best possible return on research investments. The commenter also encouraged the development of appropriate review mechanisms for all U.S. agricultural research efforts. CSREES believes the rule establishes the necessary accountability requirements to ensure that the proposed work is reviewed for technical quality and relevance while still allowing applicants latitude and flexibility in determining who performs the review.

One commenter questioned the necessity of implementing many of the requirements being imposed under the regulation, i.e., the inclusion of extension and educational activities under the rule; the shortening of the maximum grant period from five to three years; the requirement to have grantees arrange for scientific peer review of proposed research activities and merit review of proposed extension and educational activities; and the necessity to submit an annual report within 30 days of the project's

anniversary date. The regulation promulgates the legislatively mandated requirements added by the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA); therefore the imposed requirements are mandatory. Although the program authority now requires recipients to submit annual reports, the timing and nature of the reports are not legislatively specified, consequently the requirement in the final rule has been changed to be consistent with current agency policy as set forth in the terms and conditions of the grant.

One commenter requested that the requirement for peer or merit review not apply to competitive special grant programs since such a review would duplicate efforts at the agency level. The statute makes no provision distinguishing competitive and non-competitive grants; therefore the agency has no discretion. However, if the institution believes that their established organizational review process meets the CSREES definition of peer review, then the institution may certify that requirements for peer review have been met. The commenter suggested that in lieu of requiring a separate notice of completion of review, the regulation be changed so that approval by an applicant's authorized organizational representative constitutes notice of completion of institutional review. CSREES believes that at this point in time it should retain the ability to designate when the notice of completion should be submitted. However, the suggestion has merit, and CSREES intends to facilitate the submission of the notice of completion process by incorporating procedures into program requests for proposals. Finally, the commenter suggested that the proposed rule at § 3400.20 be revised to allow recipients to delegate to the agency the conduct of peer review. The legislation requires that recipients arrange for the performance of a distinct and separate review; consequently, CSREES cannot assume that responsibility on behalf of the applicants.

**Classification**

*Executive Order No. 12866*

This rule has been reviewed under Executive Order No. 12866, and it has been determined that it is not a ''significant regulatory action'' rule because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule will not create any serious inconsistencies or otherwise interfere with any actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees or loan programs and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order No. 12866. In addition, the Department certifies that the rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. No. 96–354 (5 U.S.C. 601–612).

*Executive Order No. 12988*

This rule has been reviewed under Executive Order No. 12988, Civil Justice Reform. No retroactive effect is to be given to this rule. This rule does not require administrative proceedings before parties may file suit in court.

*National Environmental Policy Act*

This rule does not significantly affect the environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

*Paperwork Reduction Act*

Under the provisions of the Paperwork Reduction Act of 1995, as amended, 44 U.S.C. chapter 35, and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320, the collection of information requirements for research activities contained in this rule have been approved under OMB Document Nos. 0524–0022 and 0524–0033. When appropriations are made available for extension and education activities under this program, CSREES will fully comply with the Paperwork Reduction Act and submit a revision to the collection of information requirements to include these activities. Comments from potential applicants on the collection of information may be submitted to CSREES–USDA; Office of Extramural Programs; Policy and Program Liaison Staff; Mail Stop 2299; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2299 by June 23, 1999, or to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20502. Reference should be made to the volume, page, and date of this **Federal Register** publication.

*Catalog of Federal Domestic Assistance*

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.200. For reasons set forth in the Final Rule-related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

**List of Subjects in 7 CFR Part 3400**

Grants programs—agriculture, Grants administration.

For the reasons set forth above, Part 3400 of Chapter XXXIV of Title 7 of the Code of Federal Regulations is amended as follows:

## PART 3400—SPECIAL RESEARCH GRANTS PROGRAM

1. The authority citation for part 3400 is revised to read as follows:

**Authority:** 7 U.S.C. 450i(c);

2. Revise § 3400.1 to read as follows:

**§ 3400.1 Applicability of regulations.**

(a) The regulations of this part apply to special research grants awarded under the authority of subsection (c) of the Competitive, Special, and Facilities Research Grant Act, as amended (7 U.S.C. 450i (c)), to facilitate or expand promising breakthroughs in areas of the food and agricultural sciences of importance to the United States. Subparts A and B, excepting this section, apply only to special research grants awarded under subsection (c)(1)(A). Subpart C, Peer and Merit Review Arranged by Grantees, and Subpart D, Annual Reports, apply to all grants awarded under subsection (c).

(b) Each year the Administrator of CSREES shall determine and announce through publication of a Notice in such publications as the **Federal Register**, professional trade journals, agency or program handbooks, the Catalog of Federal Domestic Assistance, or any other appropriate means, research program areas for which proposals will be solicited competitively, to the extent that funds are available.

(c) The regulations of this part do not apply to research, extension or education grants awarded by the Department of Agriculture under any other authority.

3. Revise § 3400.7(c) to read as follows:

**§ 3400. Use of funds; changes.**

* * * * *

(c) *Changes in project period.* The project period determined pursuant to § 3400.5(b) may be extended by the

Administrator without additional financial support for such additional period(s) as the Administrator determines may be necessary to complete or fulfill the purposes of an approved project. Any extension, when combined with the originally approved or amended project period shall not exceed three (3) years (the limitation established by statute) and shall be further conditioned upon prior request by the grantee and approval in writing by the Department, unless prescribed otherwise in the terms and conditions of a grant award.

* * * * *

4. Subpart C of Part 3400 is added to read as follows:

**Subpart C—Peer and Merit Review Arranged by Grantees**



## Subpart C—Peer and Merit Review Arranged by Grantees

### § 3400.20 Grantee review prior to award.

(a) *Review requirement.* Prior to the award of a standard or continuation grant by CSREES, any proposed project shall have undergone a review arranged by the grantee as specified in this subpart. For research projects, such review must be a scientific peer review conducted in accordance with § 3400.21. For education and extension projects, such review must be a merit review conducted in accordance with § 3400.22.

(b) *Credible and independent.* Review arranged by the grantee must provide for a credible and independent assessment of the proposed project. A credible review is one that provides an appraisal of technical quality and relevance sufficient for an organizational representative to make an informed judgment as to whether the proposal is appropriate for submission for Federal support. To provide for an independent review, such review may include USDA employees, but should not be conducted solely by USDA employees.

(c) *Notice of completion and retention of records.* A notice of completion of review shall be conveyed in writing to CSREES either as part of the submitted proposal or prior to the issuance of an award, at the option of CSREES. The written notice constitutes certification by the applicant that a review in compliance with these regulations has occurred. Applicants are not required to submit results of the review to CSREES; however, proper documentation of the review process and results should be retained by the applicant.

(d) *Renewal and supplemental grants.* Review by the grantee is not automatically required for renewal or supplemental grants as defined in § 3400.6. A subsequent grant award will require a new review if, according to CSREES, either the funded project has changed significantly, other scientific discoveries have affected the project, or the need for the project has changed. Note that a new review is necessary when applying for another standard or continuation grant after expiration of the grant term.

### § 3400.21 Scientific peer review for research activities.

Scientific peer review is an evaluation of a proposed project for technical quality and relevance to regional or national goals performed by experts with the scientific knowledge and technical skills to conduct the proposed research work. Peer reviewers may be selected from an applicant organization or from outside the organization, but shall not include principals, collaborators or others involved in the preparation of the application under review.

### § 3400.22 Merit review for education and extension activities.

Merit review is an evaluation of a proposed project or elements of a proposed program whereby the technical quality and relevance to regional or national goals are assessed. The merit review shall be performed by peers and other individuals with expertise appropriate to evaluate the proposed project. Merit reviewers may not include principals, collaborators or others involved in the preparation of the application under review.

5. Subpart D of Part 3400 is added to read as follows:

## Subpart D—Annual Reports

### § 3400.23 Annual reports.

(a) *Reporting requirement.* The recipient shall submit an annual report describing the results of the research, extension, or education activity and the merit of the results.

(b) *Report type and content.* Unless otherwise stipulated, grant recipients will have met the reporting requirement under this subpart by complying with the reporting requirements as set forth in the terms and conditions of the grant at the time of award.

Done at Washington, D.C., on this 3rd day of June, 1999.

**Colien Hefferan,**

*Acting Administrator, Cooperative State Research, Education, and Extension Service.*

[FR Doc. 99–16016 Filed 6–23–99; 8:45 am]

BILLING CODE 3410–22–P

Federal Register

Thursday
June 24, 1999

## Part VI

# Department of Housing and Urban Development

**24 CFR Part 320**
**Ginnie Mae MBS Program: Book-Entry Securities; Final Rule**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 320

**[Docket No. FR–4331–F–02]**

**RIN 2503–AA12**

## Ginnie Mae MBS Program: Book-Entry Securities

**AGENCY:** Government National Mortgage Association, HUD.

**ACTION:** Final rule.

**SUMMARY:** This rule makes final the interim rule published on September 24, 1998, which revised the security issuance procedures for the Government National Mortgage Association (''Ginnie Mae''). Under the revised procedures, a certificated security is no longer issued for a book-entry security. Currently, certificated securities are issued only upon the request of the registered holder. The interim rule revised two sections of part 320 to reflect this change. This final rule accommodates the one public comment received.

**DATES:** Effective Date: July 26, 1999.

**FOR FURTHER INFORMATION CONTACT:** Thomas R. Weakland, Vice President, Office of Program Administration, Government National Mortgage Association, Room 6204, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–0500. Telephone (202) 708–2884 (voice). For hearing-and speech-impaired persons, this number may be accessed via TTY by calling the Federal Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** The Government National Mortgage Association (''Ginnie Mae'') guarantees mortgage-backed securities of approved issuers. On September 24, 1998, Ginnie Mae published an interim rule which revised Ginnie Mae's security issuance procedures to adopt a true book-entry system for the securities that it guarantees, instead of the current system under which a certificated security is issued and stored. Accordingly, the interim rule revised § 320.5 to: (1) Revise paragraph (a) to indicate that only physical securities will specify payment and maturity dates; (2) indicate the date on and after which physical securities will be issued only at the request of the registered holder; and (3) establish when Ginnie Mae considers a book-entry security to be guaranteed. The interim rule also revised the language of § 320.13 to conform with the book-entry system. The interim rule was effective for securities issued on or after November 1, 1998.

The September 24, 1998 interim rule received one public comment. The commenter, a depository, pointed out the need for certainty in determining when delivery of uncertificated book-entry securities occurs. This final rule revises the interim rule to accommodate the public comment and to make other minor language changes. In addition, Ginnie Mae is delaying the uncertificated book-entry process for serial notes and securities backed by multifamily mortgage pools.

### Findings and Certifications

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. Ginnie Mae's designated depository is the only entity affected by this revision, and the designated depository is not a small entity. The final rule will have no adverse or disproportionate economic impact on small businesses.

*Environmental Impact*

This rulemaking is exempt from the environmental review procedures under HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) because of the exemption under 24 CFR 50.19(c)(1) which pertains to ''the approval of policy documents that do not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate property acquisition, disposition, lease, rehabilitation, alteration, demolition, or new construction, or set out to provide for standards for construction or construction materials, manufactured housing, or occupancy.'' This rulemaking simply amends existing regulations regarding the form of guaranteed securities.

*Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this final rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this final rule that would affect the relationship between the Federal Government and State and local governments.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (''UMRA'') establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

### List of Subjects for 24 CFR Part 320

Mortgages.

Accordingly, the interim rule published at 63 FR 51250, amending 24 CFR part 320 is adopted as final with the following changes:

## PART 320—GUARANTY OF MORTGAGE-BACKED SECURITIES

1. The authority citation for 24 CFR part 320 continues to read as follows:

**Authority:** 12 U.S.C. 1721(g) and 1723a(a); and 42 U.S.C. 3535(d).

2. Section 320.5 is amended by revising the last sentence of paragraph (a), paragraphs (e) and (f), and by adding paragraph (g) to read as follows:

**§ 320.5 Securities.**

(a) * * * The securities, if issued in certificated form, must specify the dates by which payments are to be made to the holders thereof, and must indicate the accounting period for collections on the pool's mortgages relating to each such payment, and the securities, if issued in certificated form, must also specify a date on which the entire principal will have been paid or will be payable.

* * * * *

(e) *Issue date.* Securities with issue dates of October 1, 1998, or before, have been issued in certificated form. Except for serial note securities and securities backed by multifamily mortgage pools, securities with issue dates of November 1, 1998, or thereafter, will be issued initially in uncertificated, book-entry form. Following initial issuance, certificated securities will be issued in exchange for uncertificated securities at the request of the registered holder and upon payment of any required fee. Serial notes and securities backed by multifamily mortgage pools will continue to be issued in certificated form until the applicable MBS Guide provides otherwise.

(f) *Delivery.* Delivery of uncertificated securities occurs when the book-entry

depository's nominee is registered as the registered owner of the securities on Ginnie Mae's central registry.

(g) *Guaranty.* The Ginnie Mae guaranty of uncertificated securities becomes effective when the book-entry depository's nominee is registered as the registered owner of the securities on Ginnie Mae's central registry.

(Approved by the Office of Management and Budget under control number 2503–0009)

3. Section 320.13 is revised to read as follows:

**§ 320.13 Guaranty.**

The Association guarantees the timely payment, whether or not collected, of the interest on the outstanding balance and the specified principal installments on securities that are registered on Ginnie Mae's central registry. The Association's guaranty is backed by the full faith and credit of the United States.

Dated: June 18, 1999.

**George S. Anderson,**

*Executive Vice President, Government National Mortgage Association.*

[FR Doc. 99–16133 Filed 6–23–99; 8:45 am]

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**Last List June 10, 1999**

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